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OUR NATURAL RESOURCES

AND

THEIR CONSERVATION

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CON-

CONSIDERATIONS
Touching
The Diſſolving,
OR
Taking away, the
COURT of *CHANCERY.*

THe *Parliament* that intends to bleſs and make the *Nation* happy, are to conſider what may beſt advance it.

In order to which, as they may claim the Prayers and *obedience* of thoſe they repreſent; So on the other ſide, the Peoples great concernment, in what ſhall be acted or ſuffered by them, is entitled to a modeſt and well-ordered *liberty* of addreſs, and advices, not only in the general, but in particular alſo, to the end that every part, how little ſoever, of the Body Politique, may be either heard, or rightly underſtood, before any alteration or Sentence ſhall goe out againſt it; Eſpecially when their Liveli-

Posterities, are to be the present and immediate sufferers in it.

For it could never be intended by the *Lawes*, or Constitutions of this *Nation*, or is indeed imaginable, that the *Parliament* can (like a *Deity*) see thorow, and know all things at once, or before-hand, or *judge* of what can be objected or said in any particular case or concernment, without hearing parties or defences.

The Justice and reason whereof may be *exemplified* from *God* himself, who being not only *Omniscient*, but *Omnipotent*, would not think it fit to condemn *Adam*, untill he had heard what he could say for himself.

Whence the Law of *Nature*, and *Nations*, the *Civil*, *Canon*, and *Common Lawes*, and all the *Parliaments* of this *People* and *Nation*, have not only made it their Rule, but their Practice, to hear both parties, without which no Sentence or Judgement can be said to be just or valid, (though the parties that did it should intend it well, and give as just a Sentence as possibly they could) according to that generally received *Maxim* amongst all *Nations*, *Qui judicaverit altera parte inaudita, æquum licet statuerit, injustus est.* Upon which consideration of *Justice*, and that most antient and uninterrupted *custome* of it, and the reason of all *Nations* and Men of Reason,

It is hoped, that the now *Parliament* (according to the antient courses of *Parliaments*, and those sage and successfull Customes of those Sonnes of *Liberty* the *Romans*; who, in the *Rogation* and promulgation of their Laws, did not only hear, but demand what the People, and those that were to experiment the sweet or sowr of it, had to say against it) will give leave to those

those that have been bred up, laid out their Fortu[illegible] spent a great part of their lives in Chancery, and well understand it, to be heard, concerning the preservation of what shall be good, or the taking away of any thing that shall appear to be evil in it, before they shall proceed upon those *Propoſals*, which have been made unto them for the dissolving of that *Court*; And for the better ſanisfaction of that small part of the People, which tire the *Supreme Authority* with their *wild* Propoſals, to repreſent unto them what that Court is, which that kind of People would have the Parliament to put down. 1

The great *inconveniences* which will happen by it, to the whole frame and body of the Laws, & *Iuſtice* of the Nation. 2

Beſides other ſad effects and Conſequences will be brought upon the People by it. 3

That the Laws are not in themſelves evil, but are only abuſed by the People. 4

That to put down, or overturn the *Chancery*, and ſo many Courts of *Iuſtice* which depend upon it, will be ſo much againſt the former Cuſtoms and reaſons of this, or any other *Nation*, as it is not to be *preſidented*. 5

That the very Being of *Parlements* is preſerved by the Laws; And that ſo great a diſtemper and diſturbance, as will come by the *taking* away of the Laws, will by a neceſſity of Juſtice, and better ordering of affairs, bring them by a revolution of Time, back again into their old Chanel. 6

That the erecting of ſo many new Courts as are propoſed, or cutting the great Courts at *Weſtminſter*, into ſo many little Courts and *Iuriſdictions*, will, beſides the beforementioned inconveniences, not only be very *prejudicial* to the *State*, but to the people. 7

And not only raiſe up again thoſe old grievances, which were formely the cauſe of diſuſing or reſtraining the *Sheriffs*-Turns, *County*-Courts, Court-*Barons* and Hundred-Courts, 8

Courts, & such like petty Iurisdictions, but far exceed them.

That the annexing of a jurisdiction or power of equity to every or many of such new Courts will much increase the Peoples grievances, and turn that little Law, which shall be left, into a course of arbitrarinesse.

CHAP. I.

What that Court is, which they would have taken away.

THE Court of Chancery (not to trouble the Reader with what is more largely declared by *Crompton* in his Iurisdictions of Courts, Sir *Henry Spelman* in his Glossary, and Sir *Edward Cook* in the fourth part of his *Institutes*, and the known benefits, which redound and come unto very many of the People by it (for those that are restrained by it from their oppressions are not always well-pleased with it) is the *conscience* of the *Supreme Authority*, to qualifie the severitie of the Laws, when they happen to be so in some particular cases, without taking away those Laws, or breaking them, or opening a gap to Ten Thousand mens inconveniences, to give relief to some one particular man, which without those general remedies and applications of *conscience*, could not otherwise be avoided; And as to the *Law* or *Latine* part of it, and granting out of Writes *Remedial*, will appear to be a *Court* as antient as the Reason or Civilitie of the *Nation*; from which all the other Courts at *Westminster-Hall*, *County-Courts*, *Sheriffs-Turns*, *Court-Leets*, and *Baron*, and all other *Courts* inferiour, may truly be said to have their beginning; the *Matrix*, or Womb of all our *Fundamental* Laws, either before or since *Magna Charta*, which had its birth and being from it; A Court, where the *Genius loci*, and *Salus populi*, like Nature in the Womb of the *Creation*, resides, to give out its ordinary administrations of Justice for the good of the people, and is for that purpose as the *Soul* to the Bo-

dy,

ly, in the direction and subsistence of it; And [illegible] head, to which all the *Nerves* and Sinews of it are joyned; The *repository* (in the absence of *Parliaments*) of *Justice* in all cases where the helps of *Parliaments* were not necessary; The [a] *Custom* of the Nation; The *Officina Justitiæ*, the place or work-house of *Justice*; The original and Authority of all mens Assurances and Conveyances by *Fines* and *Recoveries*; The Preserver of their Rights and Estates in them; The *primum mobile* of all or most of our proceedings at Law; The principal Secretary, *Amanuensis*, or *Register* of the *Supreme Authority*, and which bears *Record* unto it; The place, whither the Petitions in Parliament, that could not be dispatched, were usually referred; The *Fountain* and *Chanel*, by which Justice, Reason, and Equity, was upon any of the peoples necessities or complaints conveyed unto them; and the *Magazine*, store-house, and *dispensatory* of all Writts remedial, and in which all the peoples rights, liberties, and properties are so *concentred*, and incorporate, as they must either *die* or *live* with it, and is, as saith the last *Parliament*, no longer ago than in *April*, 1641. by a long usage and prescription grown to be, as it were, *Lex Terræ*, [b] the dissolution wherof, must of necessity produce very many mischiefs and inconveniences.

(a) *St. German de fundament. Leg. Angliæ, cap. 7.*

b M. *Hides* Argument before the Lords in Parliament, by Order of the House of Commons.

CHAP. II.

The mischiefs and inconveniencies which will happen to the whole Frame and Body of the Laws, *and Iustice of the Nation, by the dissolution of it.*

FOr it will not only take away the equitable and *English* part of it, consisting of Bils, Answers, and Decrees (being a latter part of the business of it) to examine

amine *Frauds*, Combinations, *Trusts*, Secret uses, and the like, and moderate, or take away the rigor of *Laws*, and rescue men out of the hands of such as would oppresse them, by putting *extremities* upon them; but the old and most antient part of it, consisting of writs of *Habeas corpus*, which no other Court can grant in a vacation; For that the *Chancery* was always to be open, to give remedies where it can to the people; The Sealing and Inrolling of *Letters Patents* and *Pardons*; Inrolling of *Treaties* and Leagues with Forein *Princes* and *States*; Making or granting out Writs or *Summons* of *Parliament*, *Edicts*, Proclamations, *Charters*, Protections, safe-Conducts, or for Elections of *Knights* of the Shire, *Burgesses*, *Parliament* men, and Coroners; Writs of *moderata misericordia* where any were too much amerced, and of a reasonable part of goods for Widdows and Orphans; Patents for *Sheriffs*; *Certioraries* to remove *Records* and false Judgements in inferior Courts; Writs of *Audita querela* and *Scire Facias*; Inrollments of Deeds betwixt partie and partie concerning their lands, estates, or purchases; Taking *recognisances*, and making out of extents upon Statutes and recognisances for payment of moneys, or securing of Contracts; Writs remedial or magisterial, Commissions of appeal, *Oyer* and *Terminer*, for the *Peace*, and many other things not here enumerated, tending either to the well-being or conservation of Justice; And in a word almost all the *Justice* of the Nation (*Parliaments* being properly *pro arduis*, and *eminent* occasions, not determinable by any other Court.)

Make all the Decrees of *Chancery* and *Injunctions* granted against unconscionable acts or proceedings at Common *Law*, when the said Court shall not have any being

to protect or maintain them, to be contemned; and the parties put again to new vexations and troubles; increase and encourage desperate swearings and perjuries, in the Intervals, betwixt the putting-down of the old Court and erecting of a new.

Enervate, and put into a suspition, all those very many judgements and decrees, which have been founded upon the proceedings of it; as is demonstrable enough in the Acts of the Courts of *Star*-Chamber, *Requests*, and High-*Commission*, Courts of *Honour*, and *Marches* of *Wales*, and the *North*, upon their dissolution.

Take away the *prescription* and *birth*-right of all the free-born people of *England* to their *Laws* and customs; And by dissolving the *Chancery*, and so many Courts of Law and reasonable Customs as depend upon it, Leaves them only some Statute and penal Laws to support their Proprieties: For, as many of them as they can get again, must be by a new grant, which those that have had right of *Common* or *Copy-hold* (being of a far lesse concernment,) and lost it, by pulling down an old *Tenement* and building up a new, or taking a Lease of their *Copy-hold* estate, may guess how prejudicial it may be in greater matters. NB.

Obstruct, and put to a stand all assurances, contracts, and bargains, which are every *minute* going and passing amongst the people.

May disturb, and prejudice many men in their estates and properties, as well as *Magistrates* in their power and authority over them; And put them on to jealousies, *Scruples*, and questionings of the present authority, when they shall have none, of the Customs, of the old, which they took to be reasonable, left to goe along with them, or perswade to an obedience to it; And may be

but

but as the throwing down at once of an old Park pale, upon hopes that the Deer will be perſwaded to tarry in, upon an expectation of a new.

All the writs and Commiſſions made out and retornable in Chancery will be to ſeek for a validity, as to their execution or retorn.

All the cauſes now depending, enough to take up (if they ſhould lay aſide the work of beginning and emergencie of new cauſes) the unwearied skill, endeavours, and time of the preſent *Lords Commiſsioners* and Mr. of the *Rolls*, for ſeven years (who by former motions and proceedings are well acquainted with the nature of many of them, and by that means may be more skilfull in the way of determining of them, than any Committee, which can be choſen) will then be put to the deciſion of Strangers, or ſuch as may be as long again in finiſhing of them.

And if the heap of new cauſes ſhould be undertaken by the ſame men at the ſame time, may make ſuch a ſtop, as may ſwell up the *diſcontents* of the people, to a complaint, or breaking down the banks of any new-erected Courts or *Committees* for it.

The *Court* of *Common*-pleas betwixt partie and partie, which hath its *originals* and Commiſſions from it, will expire, for it cannot hold plea without it.

All that our former Laws, appointed to be done in certain preſcript ways and times, as the bringing of *Formedons* in deſcender or remainder; and all thoſe ſeveral ſorts of remedial writs, in the *Natura Brevium*, and *Regiſter* (being like ſo many ſeveral ſorts of approved and experimented phyſicks, and remedies prepared, boxed, and laid-up by a long obſervation and experience for the future, for the ſeveral diſeaſes of mens eſtates, rights or liberties) will become uſeleſſe.

All

All the many neceſſary and wholſome powers, and buſineſſe, which former *Parliaments* have by their many Acts and Laws intruſted to the *Chancery*, will be laid aſide; and the people ſent to look out new ways, or remedies, where they can find them, and take-up that which their *forefathers* refuſed as inconvenient, inſtead of that they formerly received ſo much benefit by.

Magna Charta, and its 30 times confirmation, which was delivered with Curſes and *Anathemas* to the Infringers, and commanded to be read once a year in *Churches*, againſt which no law was to be made, upon the penalty of being void, was got, and continued, with ſo much blood of our Anceſtors, and forbids the denial of juſtice to any ſhould ask for it, gave the Tryals *per Pares*, and that none ſhould be impriſoned or *diſſeiſed*, but by original writs (then and ever ſince iſſuing out of *Chancery*) and due proceſſe of Law; And the care taken formerly that *Nullus recedat à Cancellaria ſine remedio*, will be to no purpoſe when the *Court* is put down that ſhould grant it. NB. 17 E. 1, ca. 7. 25 E. 1. Ca. 1, 2, 3, & 4.

The *Wolf* may eat the *Lamb*, when there ſhall be none to ſtretch out their hand to deliver the oppreſſed. All that was good in that Court, and beneficial for the people, (for certainly it being ſo antient, and of ſo long a continuance, could not be ſo unhappy, as to have no good thing, nor proceeding in it) will be put under the ſame *fate*, as the bad, wherein it will be loſt; unleſs by a new conſtitution, or a particular enumeration of them in a new eſtabliſhment, (which will find ſtore of diſficulties) it ſhall happen to be revived, there being a great difference betwixt what a *Court* hath incorporated in it by a cuſtome, and what it muſt get and have by a new authority for, and may tend to the greateſt al-

alteration in the administration of Justice that ever happened to a Nation, and produce many other sad effects and consequences will follow upon it.

CHAP. III.

Other sad effects and consequences will follow upon it.

FOr above 2000 Families, whose livelihoods, labours, and fortunes, have been laid out in the labour, and attendance of this so high and necessary a Court, will, without some recompence or subsistance made or provided for them, be utterly undone, and exposed to Beggery; the *rather*, for that they are not like Husbandmen, or day-*Labourers*, that can fit themselves for common and servile labours. Above 20000 Families of Townsmen and Citizens, in or neer *London*, (whose industry and maintenance depended much upon the residence, and study of the Laws at *London*, (besides the Professors of the Law, and those many families are maintained by it) will be either totally undone, or much impaired in their estates, and livelihood; Many Thousands of Watermen, the strength and subsistence of our Sea-affairs, and Thousands of Artificers, and other people who live by Trading and travelling to *London*, will be ruined; and that *City*, which by its Situation and Neighbourhood to the Sea, the riches, skill, and correspondency of her Merchants, and a long fixed Trade and custom, is the fittest of all this body Politique, to make a heart of; And was wont to be the Center of the Laws, and Courts of Justice, whither all the people flocked for Commerce, as well as Justice, will by the deprivation of them, be little better than as a *City* two parts in three destroyed, or burnt: And be

so

ſo put into a continual leſſening or decay, as the rents and profits of at leaſt a doſen neighbouring *Counties*, whoſe proviſions and commodities did, by their neighbourhood and trading thither, bear a higher price than in other remote places, will be diminiſhed, as much as a half, or one part in three, in their Eſtates and manner of living, and diſabled to pay, as they have done, publick Taxes or Aſſeſſments, when they ſhall be called for: And not only thoſe, but all the other Counties and Cities of *England*, as they ſhall neerer relate or communicate to thoſe Counties, be made the worſe for it; But the ſmalleſt Towns or Villages, or moſt remote parts of the Land, will quickly come to be wofully ſenſible of the diſtemper or decay of ſuch a principal and vital part of the Nation; The ruine, or but diſordering whereof, by the putting down of the Law and Courts thereof, may prove to be a cauſe of many more, and greater inconveniences, than if that great and general Manufacture or Trade of *Clothing* ſhould be prohibited; then the altering or turning the courſe of all the *Rivers*, or known chanels, or currents of waters, or the ſtopping or taking away the Highwayes, and known *roads* of the Nation, could bring upon the People.

Whilſt they that thus beſpeak their own *ruine*, do not yet, perhaps, ſo fully take into their conſideration, as they may hereafter, when it ſhall be too late, that the *Chancery*, and the Courts of *Juſtice* at *Weſtminſter*, are as the *Aſylum's* or ſanctuaries of all that are oppreſſed; the *Protection* of the people, and (next under God, and the Supreme Authority) the moſt certain rules of their liberties and properties: And that the liberties of the People do reſide, and have their Being in the Laws and Courts of Juſtice, as the *vital* and animal ſpirits doe in

the *blood*; and that it is as impossible (as was not long agoe observed by a learned Judge of this Nation) to destroy the form of the Law, and preserve the body, as it is to take away the *form* of a man, and to preserve his *Being*: For when the Law like the Body natural shall dissolve or die, the Justice of the Nation, which is as the Soul to that Body, must immediately take its flight and be gone.

Lord St. *John.*

Those that would procure the *Vinyard* to be destroyed, because they themselves are shut out of it, do not consider, that there are more motions and business in *Chancery* dispatched in one day, than a Committee of the late Parliament did in a year, & more businesse in a year determined in that and the three other Courts of *Westminster*, by themselves and their ministerial *Offices*, than all the *Committees* of the late Parliament have dispatched in 12 years last past, or would have been able to do after their usual pace in twice as many more, and need not go far to be informed. What an obstruction and hindrance there must then be to the people of this Nation, when these *Courts* and *Offices* shall be taken away, and the People left to attend and Petition for some Moneths together, before they can so much as get a Petition read, and Tire and Trouble all the Friends they have, for that they might formerly for a far lesser *Fee*, & in an ordinary course have obtained in half an hours space, as soon as it was asked for.

N.B.

Nor observe as they might; that the reason why the good intentions of many men in those many several *Committees* (which the necessities of war did cause the late Parliament to erect in this Nation) brought them so much into the hatred, discontents, curses, & *Complaints* of the People, was (amongst other their failings) their igno-

ignorance in the Laws of the Land, and of the old courſe of expounding, taking in, and giving out of *reaſon*, their immethodical proceedings, and ſeeking ſometimes to make a reaſon out of half a reaſon, or that which was but a ſhadow or colour of it, which with their many ſcruples (which would not be made by more knowing men) their bidding the people ſo often to withdraw, and adviſing with themſelves, or referring it to their own Counſel (which made many ſeveral hearings of that, which other men would have diſpatched preſently) have been the cauſe of thoſe outcries, pamphletings, and Petitions have from moſt Counties and places been againſt them, and that the horrid delayes and ſmall diſpatch of thoſe Committees (who, if there were nothing elſe in it, muſt needs in ſo many different opinions, arguings, and needleſſe debates amongſt themſelves be a great deal more tedious and undiſpatching, than a fewer number of able men in a *Court*) were much of the cauſe alſo of the peoples heavy complaints againſt the late Parliament. N3.

And that the *Chancery* and Courts of Juſtice have not for many *hundred* years paſt (put all the Complaints, which have been made againſt them together) had ſo many, and ſo univerſal Complaints made againſt them, as have in the ſpace of theſe laſt *Ten* years been made againſt the late *Committees*, of which thoſe that have left their *Hoſanna* to the Lawes to cry *Crucifige* would be ill contented if all the Trades in *London* ſhould be at once put down, for that there are greater abuſes in them, Doe not doe as they would be done by, nor think what a drouth and want of Juſtice there will be all over the Land, when the Springs thereof ſhall be ſtopped up, and what an encreaſe of wants and neceſſities there will

be when the way of preferment, and provision for younger Children, shall in the ruine of this great *Tribe*, and part of the people, be taken away? And what a strange attempt it would be in *Physick* upon the body Natural, to go about to divert the daily and constant Course of the blood from the heart, and put it into a new way, or to make some other parts of the body to do the office of it.

Nor do those *Proposers* (who would take away their Neighbours wood to build an *Altar* to sacrifice their own imaginations upon,) consider, as they ought, what it is to remove the *old Land-mark*, and *enter upon the field of the Fatherless*; nor how great a burthen of sin will lie upon their Souls in the day of *Terror* and *Accompt*, for the unnecessary ruine of so many Thousand Families, as are now living, and a general disturbance and distemper of a whole Nation, and their posterity for the time to come, and all upon no greater a Score than their own *presumption*, and *incapacities* to judge of Laws, and meddle where they had no calling, either from God or Man, and when they stop'd their ears like the *Adder*, and might have been *advised*, but would not: or how much greater or *sadder* a burthen it will be to their *consciences*, if that which they shall now fancy to be good, should prove hereafter to be a continual *curse* and thraldom to a whole Nation, and a Succession of generations after them? That the taking away from the people their Courts of Justice, and reasonable Customs, will not only root out and overturn their *properties*, but cast it into an *arbitrariness* of will and power; from which the best intentions and integrity of those, that shall be in power at the present, will not be able to secure the people or their posterity; And that this so great an alte-

teration (though carried on with never ſo good purpoſes) may meet with no better a ſucceſs in the end, than that *unadviſed* and loving attempt of old *Pelias* Daughters in the Poets, who by letting out of the old blood of their *Father*, to procure new, loſt what they might have kept, and gained no more than an impoſſibility to keep him alive, whom they thought to have made young again.

And that when they ſhall have done all they can, or have obtained what they would of the *Parliament* by ſuch kind of propoſals, it will be to as little ſatisfaction to the people, as to take away (if they could) the *Sun* out of the Firmament, and promiſe them another inſtead of it; or forbid all known experimented Medicines and Courſes in *Phyſick*, and tell them they ſhall have better.

CHAP. IV

That the Lawes *are not in themſelves evil, but are only abuſed by the People.*

ALl which might be ſufficient to call off thoſe *Tradeſmen*, who have no more acquaintance with the Law, than what they got in ſome *Suites* were rightfully adjudged againſt them, and ſome others, who are neer *Allied* unto a buſie ignorance, from troubling the Supreme Authority with their ſo eager purſute, and perſecution of thoſe Laws, which in the beginning of the laſt *Parliament* they took to be the *Walls* and *Bulwarks* of *Parliaments*, and could proteſt, ſwear, covenant, take arms, expend and hazard their lives and eſtates for to maintain.

Or to *perſwade* them not to hunt the *Lamb* inſtead of the *Fox*, or their own happineſs in ſtead of a *grievance*, nor to think their Time well ſpent in Crying-down the Fun-

Fundamental Laws of *England*, without which they once thought they ſhould be moſt miſerable, if they were not hurried, or headlongly driven on by a ſtrange fury of their own *Fancies*, or preſumptions, or an expectation of ſetting up themſelves by the ruine and downfall of many Thouſands, will be loſers to every one, will be gainers by it, or were not Acted by ſome *Jeſuitical* party, or influence, would diſturb and deſtroy this Commonwealth.

To prevent which, and to do what we can as long as there is any hope left, we ſhall intreat them by the Tears and Compaſſion of their *already* too much impoveriſhed, torn, and languiſhing Mother *England*, and the love they ought to bear to their Brethren, and their own (if they will not be carefull of other mens) *poſterities*, to ſtand a little, and look about them, before they drown us and themſelves in that Sea of miſery and confuſion, they are letting in upon us; and either to read our *Lawes*, or be informed by thoſe that underſtand them, and *conſider* well before-hand, now they may help it, that which Truth and a ſad experience may hereafter tel them, when they cannot find a *remedy* for it; That the Laws and Courts of *Juſtice* they would now over-turn, are thoſe Lawes and *Courts*, which by a long-experience, and univerſal *reaſon*, and conſent of our Fore-Fathers, have thorough many ages and generations, deſcended and come unto us, as a common *Birth-right* and Inheritance, will (if rightly examined, and inſpected) appear to be *deduced* from no worſe original, or authority, than the *Decalogue*, or *Ten Commandements* themſelves, and the reaſon and equity of many of thoſe other *Laws*, which God himſelf in Mount *Sinai* commanded *Moſes* to declare unto the people, That

the

the Law of *England* is *Ipſiſsima ratio*, right reaſon it ſelf.

From which, and the right uſe and practice thereof, if they that ſhall make it their buſineſs to accuſe our Laws and reaſonable *Cuſtoms*, and *Courſes*, of Courts of *Juſtice* ſhall but ~~*abſtruſt*~~ abstract and take (out of all the *cauſleſs* complaints are made againſt it, which ought to be done by thoſe will judge aright of it) all that happeneth by the ignorance, or weakneſs of men, in making of their *Contracts* and Aſſurances one with another; The cavils, and ſtrange ſubtilties, of thoſe that would deceive, oppreſs, or take *advantage* by it; The making of *Wills* and *Conveyances* by ignorant perſons, unfit placing of words in them, and want of coherence, or ſignification, (which do not ſeldom beget contradictions, or perplexities of the ſenſe or meaning of the parties) their holding hard to advantages gotten; by a miſtake of words or parties to create a right, or title, where there ſhould be none; Wreſting of Laws to their own purpoſes; Self-conceited, falſe or frivolous Suggeſtions, in their motions, or deſires to the *Courts*; *Reiteration* and ſucceſſion of pretences, and ſtrange allegations, not at firſt diſcernable by the *Lawyers* or *Judges* themſelves; Haſty, and wilfull commencing of *Suites* upon ſmall or no advice at all; *Ravelling* and perplexing of their own Cauſes, Eluding, or ſtriving to over-reach the Laws, or ſtrain them beyond their intentions; Ignorance or wilfulneſſe in managing of their Cauſes, and the frowardneſs or unquietneſs of their own *ſpirits*, in courſing one another, through all the Courts of *Law* at *Weſtminſter*-Hall, by ſeverall Tryals, and Verdicts, bringing writs of *Error* upon them, out of the *Common-Pleas* into the *Vpper-Bench*, thence to the *Exchequer*-Chamber, to be heard by all the Judges of *England*;

land, Thence to the Parliament, (though they pay great and ſeveral coſts to their adverſaries) diſcontinuing of writs of *Error*, or abatement of them, by the death, or inſtance of ſome of the parties, bringing their Bills, and Croſſe *Bills* in *Chancery*, getting *Orders* upon Orders, Decrees upon *Decrees*, *Rehearings*, *Reviews*, or Diſmiſſions, Entitling the State afterwards to what they ſued or vexed one another for; Appeals from the Country-*Committees*, to *Haberdaſhers Hall*, from thence to the *Committee* of *Indempnity*, Thence to the Committee of *Obſtructions*, from thence to the Committee of *Petitions* for grievances, And from thence to the *Parliament* again, and if they be rejected, or cannot be heard in one *Parliament*, Try another, and another, and as many as they can live to ſollicite; their multiplying of needleſſe and frivolous Actions, obſtinate, and willfull endeavours, in trying all they can to overpower, or woorie their Adverſaries, never acquieſcing in the Judgement of their own *Lawiers* or of any *Court*, as long as any wit, or invention of any other *Lawier* (who cannot alwayes ſee through his *Clients* unjuſt pretences) can but ſhew them the way to further vexations; The Neceſſity which lies upon Judges and Courts to keep Rules & Orders, which may not be broken to help particular Caſes; *Miſcarriage* of Cauſes by miſpleadings, & *Incertainties* in the Plaintiffs or Defendants own Actions or *inſtructions*; Their hiding or concealing *truths*, Their not agreeing or right Stating of matters of fact, miſapplications of good Laws & remedies to ill purpoſes, deceit & delay of one another in references, weakneſſe of *Arbitrators*, and *Awards*, deceit or ignorance of *Sollicitors* (a race of people was not allowed or heard of in the Law about 100 years agoe, (but where Noblemen

blemen had and reteined them in their houſes as menial ſervants) too many of which of late have been broken, and buſie *Trades*-men, or ſuch as ſcarcely know the names of a book of *law*, or to ſpell, write, or read. Their champerty *maintenance* and *ambodextry* (ſome knowing and honeſt *Sollicitors* excepted) taking mony before hand of their Clients, and never giving an Accompt for it, *miſtakings* or wilfulneſſe of *Juries*, want of evidences, intricacy of cauſes, Errors or miſinterpretation or miſtake of Judges, Ignorance, malice or ſelf ends of thoſe that ſpeak ill of them, and the difficulties which ſometimes do lie upon the wiſeſt and moſt honeſt of men in diſcerning between truth and falſhood, and dividing betwixt them, and diſtinguiſh, as our Fore-Fathers and the wiſdome of former ages uſed to do, betwixt the right uſe, and the abuſe of them, between particular miſchiefs, and general *inconveniences*, betwixt the Inconveniences which ſome one Law may ſometimes bring upon a few particular men, and the good it brings to one hundred thouſand others at the ſame time, and allow but (that which was never yet denyed to all the *Lawes* of the world) an *impoſſibility* of foreſeeing, preventing or remedying of all things which the wickedneſſe of the hearts of men, or their devices may lay in their way, there will not be enough left to prove them to be corrupt in their foundations.

Take away and lay at the *doors* of thoſe that ought to bear it, the ſelling or mortgaging of lands Twice or Thrice over, the Counterfeiting and putting to the Seals and hands of parties and witneſſes, *forgeries*, and taking out, and putting in of words into deeds or evidences, ſtrange and unheard-of *combinations*, practices, *witchcrafts* and *Sorceries*, putting of *dead* mens hands to

Wills, moulding, and hiring of falſe witneſſes, and ſuborning or packing or laying of *Iuries* (which are the Actions of the parties themſelves to compaſſe and bring to paſſe their own wicked purpoſes, and not of the *Lawiers*.) and

Let it be but conſidered, that if there happen in an age ſome unreconcilable Suits, wherein ſome contentious ſpirits have for many years together, chaſed and vexed one another out of one Action into another, almoſt to their utter undoing, There have been in every year of thoſe many years, many thouſands of cauſes (as may be demonſtrated to any that will call for a proof of it) diſpatched & put to an end by the Courts of Law at *Weſtminſter*, or in the Circuits, & that a multitude of People Actions and buſineſſes more than formerly, in a Time of more Deceit, Falſhood, Perjuries, Secret and cunning combinations, and breaches of Truſt, than ever were, may make an increaſe & multiplicity of Suits, and yet the Lawiers, who in an age have not a common Barretor amongſt them, be as innocent as the Phyſicians, who are not accuſed for much practiſe in a time of Peſtilence, or when there are ſtore of *Epidemical* diſeaſes, there will be no cauſe to ſay that the Law is endleſſe.

Let it be but conſidered, that the greater part of eſtabliſhed *Fees* in the Courts of juſtice, are leſſe than what the moſt common *Artificers* do take for their labour, and as for any which exceed that rate, are but that which was allowed one *Hundred* years agoe, when the rate and price of Cloths and Victuals was not one in three ſo much as it is now; that the *Attorneys* 3 s. 4 d. fee, and the Lawiers 10 s. fee, would then have bought 3 times more than what may be now for it:

That

That the *Gentry* have ſince raiſed their rents two parts in *Three*, the Farmers the price of their Corn and Cattel, and the Citizens their Commodities, and ſervants and workmen raiſed their wages, yet the Lawiers except ſome eminent and great *practiſers*, who take but the Free will offering of thoſe that give them the greater Fees, to take the greater care of their buſineſſe, have but the ſame Fees were formerly taken by them.

That the Lawiers who had no worſe a name auntiently given to their profeſſion by the moſt Civilized Nations of *Europe*, than *Sacerdotes juſtitiæ*, the Miniſters of Juſtice, and had ſo right an eſteem in our former Parliaments, as by ſeveral Acts of Parliament made upon ſeveral and ſucceſſive neceſſities of the People, in 2 *Edward* 3 *cap.* 2. 14. *Edward* 3 *cap.* 16. 34. *Edward* 3. *cap.* 1. and 20. *Richard* 2. *cap.* 10. It was ſpecially provided, that none but men learned in the Law ſhould be made *Juſtices* of *Aſsize* and *Goal* delivery, and that there ſhould be in every County men learned in the *Law* made Juſtices of the peace; And in all their Actions either at home in their Counties, or at *London* in the Terms, are known to be men of Godlineſſe, Sobriety, and learning, and compared with any other profeſſion or part of the People, to have fewer men of vice or ignominie amongſt them than any other profeſſion. ~~Let it be but conſidered~~ that the Law (as it may be demonſtrated, if an accompt were kept, as ſome Phyſitians do of their conſultations and Cures, or as the People of the *Bath* do of ſome that are cured in every year) doth in every year recover and get in many Thouſands of men *debts* redreſſe their *Injuries*, preſerve their *rights*, ſecure their *eſtates*, reſcue and take ſome *Innocent* mens lives and eſtates out of the jawes

of death or oppreſſion, ſupport the hand of *Juſtice*, and is as *eyes* and *ears* unto it, puts her Judgement in the *right* way when it was ſometimes allmoſt carried off, ormiſlead into a *wrong*, and hath kept us and our fore-fathers in a greater ſafety & certainty of it than *Roman Legions* could have done, and Ten greatet *Armyes* than we now bear the charge of.

That in the determination or adjudging of every Action or Suit in Law or Equity, one of the parties is diſcontented, and one of them moſt commonly faulty, or much miſtaken in the grounds of that Conteſt (Actions of Debt or of other natures, where the Plaintiff will not give time, and the Defendant only ſtands out a Suit to gain it only excepted) and do all they can to lay the fault upon the Law, when it ſhould be charged upon themſelves.

And that the difficulty in the caſe before *Solomon* betwixt the true Mother of the Child, and the falſe, could not be charged upon any defects of the *Hebrew* Laws, or the Profeſſors thereof, but the wickedneſſe and falſe pretences of her that had no right to it, and that every diſcontent and every Complaint is not juſt becauſe the partie thinks it to be ſo; There will be as little cauſe to ſay that the practice of the Law, as to the *Law* it ſelf, or to the *Lawiers*, is a grievance, or that they are worſe than Ten Thouſand *Devils*, as that *Tenterden* Steeple is the cauſe of *Goodwyne* Sands: For moſt of the things complained of in the Law (if impartially and knowingly examined) will appear to be neither from the *Law*, or by the Law it *Self*, or of the *Eſſence*, Nature, or *Intention* of it, but meerly proceeding from the people, and their own miſuſe or abuſe of them, which being not evill in themſelves

ſelves, but commanding good things to be done, and forbidding evil, are no more to be charged with the faults which the people themſelves Commit in abuſing of them, than that great *Luminary* and comfort of Mankind the *Sun*, can be ſaid to be the cauſe of darkneſſe, or ill influences, becauſe in his journey or execution of his Office he is ſometimes or-charg'd with Foggs, ill vapours, or exhalations from the Earth, which he would diſperſe or carry away, or meets with ſo many Clouds, interpoſitions, and Shadows of the Earth, Conjunctions of *Planets*, or Malevolent *Aſpects*; than the neceſſary arts of Phyſick and Chirurgery are to be blamed for the many Errors and miſchiefs are done by *Montebanks*, or confident and credulous women that have no skill in them; than wine and women for the General abuſes of them, or Religion and the Sacred Scriptures, becauſe the world hath of late been troubled with ſo many Hereſies and Schiſms, proceeding from the miſ-interpretation of the one, and practice of the other, and may the better be underſtood and believed to be thus *Innocent*, when thoſe that not long agoe could run to *Weſtminſter*, and cry for juſtice againſt the *Earl* of *Strafford*, but for at moſt an endeavour to ſubvert the Laws, and cryed out they could have no Trading or ſubſiſtence, if his head were not taken off, cannot now give us a reaſon why thoſe very Laws, and the Courts that adminiſtred them, ſhould not now be as good as they were then.

Or why the Old *Chancery* and *Court* hands, which being made out of *Saxon* letters or Characters before any *Friers* or *Monks* ever came into *England*, have through ſo many generations come down to us, and given ſuch a legibility, duration, and continuance to all our re-

cords

cords, as they may yet be plainly seen and read for 7 or 8 hundred years past, should be more inconvenient, Popish, & Antichristian, than the Secretary, & other Mungrel and Scrible dashed hands made out of the Roman and Italian, which will not as it begins to appear already last 7 years together.

Or why the Lawiers may not use *Abbreviations* as well as the *Doctors* & *Apothecaries*, or why *Abbreviations* should be bad & not allowable in Court or Chancery hands or writing, as well as in the writings which Merchants have daily occasion to use, in the *Dutch*, *French*, or *Scottish* Laws or writings: Or why the Law should be bad because the Lawiers doe use Terms of Art or short expressions tending much to the ease of themselves, and the Court and Judges that are to hear them, are not denyed to all other Arts and Sciences, but are, to ~~Bricklayers and Carpenters, to~~ allowed Farriers who have their Terms of their own making, as to cure the *Mallender*, *Farses*, *Truncheons*, *Barbs* and *Wanders* in a horse, and to heal a wound in the *Lampas*, and to the Seamen or Mariners who are never found fault with for using the Tearms of *Starboard*, and *Larboard*, *Lee shore*, *Misne-Mast*, shrouds, bear up, *weather-gage*, run so many glasses, and the like strange words and notions are not to be understood by any but those that have served long at the profession, and learned their Sea *Grammar*. Wherefore it will be time to tell those that shall thus labour to take away from the Nation their well-being by such their fond proposals, That the war to which they contributed was not undertaken by the late Parliament to pull down the fundamental Laws, but to preserve them, and that if the *Articles* or Publick Faith but once given by the *Army* to

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Enemies upon the ſurrender of *Oxford* and other *Garriſons* were ſo precious and ſacred to the late Parliament and *Army*, as well as it is to this, as not in the leaſt part to be violated, Thoſe many great proteſtations of the late Parliament and Army in very many of their Declarations and Remonſtrances (ſome whereof were ordered to be read in *Churches*) and their Publick Faith ſo many times reiterated and given, may ſurely give a ſtop and denyal to theſe *Traders* in *Innovation*, eſpecially when it ſhall be conſidered, that thoſe Publick Faiths and promiſes, were not made or given to thoſe that were Enemies and fought againſt them, as the other ſide did in a jealouſie, and diſtruſt that they did not intend (as they promiſed, to maintain thoſe Laws, which they pretended to fight for; but to thoſe that believing them did adventure and engage all they had, and went all the way along with them; and that if there were nothing elſe to be ſaid for it, the Parliament in their great and continual care of the People and Commonwealth will not certainly ſuffer the Chancery and all the Courts of Juſtice which depend upon it to be taken away, would be ſo much againſt the former Cuſtoms and reaſon of this as well as other Nations, as it is not be precedented, but will be contrary.

CHAP.

CHAP. V.

That to put down or take away the Chancery, *and so many Courts of Justice which depend upon it, will be so much against the former* Customs *or* reason *of this or any other* Nation, *as it is not to be precedented.*

TO what was done by the *Athenians*, who in all their *Ostracismes*, and popular *unquietnesse*, could preserve their Laws and Courts of Justice. Or the *Romans*, who in all their Changings and *Tumblings* from one government to another, in their sending for new Laws to *Athens*, their complaints and dislike of Magistrates.

Bloody proscriptions of the *Syllan* and *Marian* factions; *Tribunitial* powers, *Dictatorships*, and revolving back again into *Monarchy*, could keep close to the body of their Laws and Constitutions.

To what our Saviour *Christ* did in his reformation, who when he brought the glad Tidings of the *Gospel* into the world, took away the rigor and *Ceremonial* part of the Law without destroying the *moral*. To the reformation of the *Civil Laws* by *Justinian* the *Emperour*, who having appointed *Ten* of the most eminent and worthy of his *Empire*, (amongst which were *Tribonianus* and diverse learned professors of the *Laws*,) to read over and peruse all the voluminous Laws in being, did compile and make out of them his *Pandects*, and that body of the *Civil Law* which hath for above one *Thousand* years since inhabited and been esteemed amongst the most Civilized Nations of *Europe*, as a great part of their guide and reason;

Hist. Juris Civil. composit per Justinianum

Chronic. Jo. Eromton.

Contrary to what our old King *Alured* or *Alfred* did about

about 800 years ſince, who could in Parliament reform ſome of the *Laws* made by King *Ethelbert* above 200 years before, puniſh ſome Judges, and think ne ver the worſe of the *Laws*, for ſome abuſe of them.

To what *William* the *Conquerour* did, who by granting the *Saxons* their old Laws (many of which are ſtill amongſt us) ſtrengthned his Conqueſts, and gave quiet entertainment to as many of his own edicts, and *Norman* Cuſtoms, as were found to be reaſonable.

Chronic. Leichfieldenſe, & in ☞ *Edw. Confeſſor, confirm. per Gulielm. Conqueſt.*

To that of his Son *Henry* the *firſt*, Who could amend ſome of his Fathers and predeceſſors Laws, without overturning all the reſt.

To that of *Henry* of *ſecond*, Who removed and alterd many things amiſſe in the execution of Laws, but left that which was good and uſefull in them.

To what was done by *Edward* the *firſt*, Who finding all his *Judges* but Two, ſo corrupt as they deſerved puniſhment, did not baniſh all the Laws with them.

To what was done by *Henry* the *eighth*, Who in the regulation of the Eccleſiaſtical Laws, appointed by Act of Parliament in 35 *Hen.* 8. to be done by eight *Clergy*-men, eight *Canon*, eight *Civil*, and eight *Common* Lawyers; And by his moſt vertuous Son *Edward* the *ſixth* delegated to that learned & Godly *Martyr Thomas Cramner* Arch Biſhop of *Canterbury*, *Peter Martyr*, & other Divines, 2 Doctors of the *Civil* and *Canon* Laws, and two Common Lawiers, did leave what was good to remain of it.

Reformationes legum Eccleſiaſtic. & in Epiſt. H. 8. & E. 6.

Contrary to what the States of *Holland* and the Uni-

ted Provinces did, who in their imbittered deteſt of the *Spaniſh* government, could find it as neceſſary as reaſonable, to keep their *Common Law*, *Burgundian* and *Batavian* cuſtoms, the Fewdal Laws of the *Lombards*, and as much of the *Roman* and Civil Laws, as did not contradict their own, & therfore in the laying of the foundation of their confederacy and government did in one of the Articles of their ſolemn league made at *Virecht* in *Anno* 1579. bind one another to the defence of their Laws and Statutes, *a Majoribus accepta*, and ordered the People to be ſworn unto them. To the Wiſdom and proceedings of our forefathers in *Parliaments*, who (if ſome of them had been fooliſh, could not for the Major part in every Parliament ~~have~~ been deſtitute of wiſdom; or if in one year, meeting, time, age, or generation, cannot with the reputation of wiſdom to any that ſhall ſo judge of them, be thought to have been ſo to a continual ſucceſſion) did only correct, alter, and add, as there were neceſſities or occaſions, but left us our Laws and reaſonable cuſtoms to preſerve our eſtates and properties.

Cornel. Neoſtad. in Epiſt. lib. de Succeſſione feudi Juris ſcript. Hollandiæ.

In Fœdere Ultraiect Anno 1579 Art. 2. & 21.

Contrary to all the Petitions and pretences of Grievances, that ever were exhibited by any of the people before, or ſince the Conqueſt, to any *King*, *Parliament*, great *Councel*, or *Aſſembly*, for above one thouſand years.

To what our *Aunceſtors* did in *England*, Who in the change of governments, and ſucceſſion of Kings, from the *Saxons* to the *Danes*, from them to the *Normans*, thence to the *Plantagenet* line, from the *right* Heirs to the *wrong*, from the *red roſe* to the *white*, from the *white* to the *red* and *white* united in *Henry* the *ſeventh*, from the *Catholick* religion to the *Proteſtant*, from that to the *Catholick*, and from that back again to the *Proteſtant*

ſtant, from the *Engliſh* line to the *Scottiſh*, did never find any cauſe to take away that *Court*, which they found by ſo long and ſucceſſive experiments to be the conſervator of Juſtice.

Contrary to the *National Covenant*, which many have endeavoured to prove to be conſiſtent with the Ingagement; to what was done by the late Parliament in their reformation of religion, wherein, though the *Biſhops* and Book of *Common Prayer* were put down and aboliſhed (and that not at once) did not put down all the Doctrine of the *Church*, or all the Diſcipline, or parts of it, nor ſhut up the *Church* doors.

Contrary to the many *Declarations* vows and *Imprecations* of the late *Parliament*. The many Declarations and Remonſtrances of the *Army*. The Courſe held in the late Conqueſts of *Scotland* and *Ireland*, who by enjoying their *Lawes* and Courts of Juſtice have yeelded an eaſier ſubmiſſion to it. The Act of the late *Parliament* in erection of this *Commonwealth*, which declared and promiſed to the people that they would not alter, nor take away the fundamental *Lawes*. The Peoples purpoſe of their ingagement upon it. The Act or order of *Parliament* for the regulation of the *Lawes*. The *regulators Syſteme*, and the Nature of a *reformation* or regulation. The late Act for taking away *Fines* in *Chancery*, and many of the Petitions that of late have been againſt the Lawes, which deſired a *regulation*, but not a total taking of them away.

CHAP. VI.

That the very Being of Parliaments is preserved by the Laws, *and that so great a distemper and disturbance as will come upon the people by putting down of the* Laws, *will by a necessitie of Justice, and of the better ordering of* Affairs, *bring them back again by a revolution of time into their old Channel.*

WHich for so much of them as have their *Principles* from the Laws of *Nature* and right *reason*, and the consent of them, or are founded and deduced from them, are so interwoven and radicated in the very Being of Parliaments, so *inseparable* from it, and so *reciprocate* to it, as that high Court of Parliament, which is not by themselves intended to be any standing or ordinary *Court* or Rule of Justice, cannot when it shall sit upon emergencies or matters of greater consequence, be without it, no more than the people can in the *Intervals* or absence of it, for that the Law of *Nature*, which God *imprinted* and put into the Hearts of all Mankind, and that Law of *reason*, which bindeth Creatures reasonable in this world, and with which by Reason they most plainly perceive themselves to be bound, and so much of our Laws, which out of the Law either of God, or Nature, or Reason, our Forefathers probably gathered and conceived to be expedient (which the learned *Hooker* putting all together calleth the second Law *eternal*) are so in some sort immutable, as they cannot be taken away, or repealed by any Act of Parliament whatsoever, but will return and grow up again with the nature and reason of *Mankind*; for Laws of men

Hooker 1 *lib.* Ecclesiastical Pollicy

men, not contrary to the Law of God, nor to the Law of *reason*, are to be obſerved in the Law of the *Soul* and he that deſpiſeth them reſiſteth *God*, and that which plain and neceſſary reaſon bindeth men unto, will upon ſome inconvenience or neceſſity, at one time or other, get it ſelf in again, and obtain an allowance or ratification of human Laws for it. Doctor and Student 4 Chap.

Which ſhould adviſe a great inſpection, and *examination*, into the *nature*, *cauſe*, and effect of all our *Laws*, before a ſentence of *condemnation* paſſe againſt them, that ſo it may be clearly known, what, and how much of them have their Being from the Law of *God* or *Nature*, right reaſon, or convenience, and a value accordingly put upon them, that the *Gold* may not be caſt away for the droſſe, nor the *Saint* for his infirmity; That we may not be ſent to ſeek after in the rubbidg for that we might have kept, or laid by, or not ſeem to have pullen down all the houſe, when ſome little part of it would have ſerved the turn, or to be ſuch ill Husbands, as to caſt away the materials might have ſerved for the new building, and is better or more ſubſtantial than any can be gotten inſtead of it, of which opinion were all our former *Parliaments*, who hitherto in their correcting and altering of Laws, could never be brought to forſake any thing might be good, or fit to remain of them, and all our Forefathers, who in their greateſt eſteem and reverence of *Parliaments*, did believe that an Act of *Parliament* it ſelf (*e*) enacting any thing againſt Common *right*, and right *reaſon*, would be void, and of none effect; to what end then ſhould theſe men ſollicite a Parliament, to take away the matter of its own form and ſubſiſtence, and its Being or *coexiſtence* with the Laws, or to take away that which

(*e*) Sir *Francis Bacon*. Judge *Hutton* in his argument againſt the ſhip money, and Lord *Hobart* in his Reports.

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is to be a rule of justice to the people, when they cannot themselves intend it, or to lay by those Laws which the wisdom of their *Predecessors* thought they had done the people good service when they did procure them to be enacted, and those reasonable customes which the people were wont to swear their *Kings* to observe, when the late Parliament took it to be a good way for the preservatiou of the Laws and Liberties of the people, that *Sheriffs* and Justices should be sworn to the due execution of the petition of *right* (*m*) Stiled themselves the *Conservatory* of Lawes, took Arms for the maintenance therof,& appealed to the people touching that *imputation* (which they said was then laid upon them) that they which represented all the Commons of *England*, and had so great a share in it, should endeavour to take away the *Laws*, and run so great a hazard to make themselves Slaves.

(*m*) Remonstrance 15 *December* 1641. and 26 of *May* 1642.

Wherefore, if the Parliament (to please these unquiet and proposing spirits, and let them see what is to ask *Stones* instead of *Bread*, or *Serpents* instead of *Fishes*) should give them the *misery* which they demand of them, and contribute (which cannot be easily imagined) so much to their unruly desires, as to let them fling off their old *Laws*, like an unusefull, or too long a worn garment; It will be no hard matter without the help of *Lilly*, and his College of *Astrologers*, to foresee (what, besides the many mischiefs and inconveniences before recited, must be endured and gone through in the interim) and foretell what will become of it; for suppose it to be done, and that we see the old man put into his Cradle again, or *Adam* into his Apron of fig-leaves, the event will come up as close as a Conclusion to good Premises, that such young Committees

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or new model *Courts* will in time creep into the method and manner of the *old*; all that was reason in one case or cause will be made use of, and made a *precedent* in another: The wiser and most able men will be followed, pleadings and allegations will be by the Committee or Judges themselves ordered to be with Certainties or Method; The Court or Committee will more willingly hear those that can save them a labour, by speaking more short and pertinently, than the parties themselves, and the parties themselves will rather desire men of skill, and such as know the usage and orders of the *Courts* and *Committees*, to speak for them, than to adventure to do it themselves, when their interest may beget a passion and disturbance, and hinder them from the right managing and ordering of their own businesse, abuses and misdoings of those that attend those Courts or Committees will from time to time require new orders and officers to prevent them. For in this, manner, in all probabilitie, and without doubt, those most venerable and usefull Courts at *Westminster* came by degrees and small beginnings, through the Course and care of so many ages to the perfection is now to be seen in them, cannot be denied by those that shall without the Spectacles of ignorance or partiallity, but equally and judiciously look upon them.

But if any shall doubt of this necessity of the Laws falling again into their own *Chanel*, after a Series or long course of inconveniences to the people, and some ages spent in bewailing the losse of their former happinesse; Let them see but what hath been done but in three or four years space in the Committee of *Sequestrations* at *Haberdashers* Hall, who from a Committee of seven Commissioners, with a Clark or Register to attend

tend them, can now uſe the benefit of a Bar to admit Lawiers and ſuch as know the uſe of their Committee to plead before them, order ſome things to be done by the Clarks and officers in an ordinary Courſe, and other things not ~~to order~~, and have the uſe of an *Examiner*, *Remembrancer*, and *Aſſiſtant Counſel* of the Court, can refer cauſes, have an *Auditor*, an *Attorney*, or *Sollicitor* General, mark, ſign, and ſeal, their *orders* or *warrants* whereby they may not be counterfeited, order men to take Copies of their own Petitions, and leave the originals, to file *affidavits* and *reports*, and that none ſhall be heard without bringing the laſt *order*, or a Copie thereof under the Regiſters hands; Turn the way of Petitions as is now lately done into a way of Motions, have under-*Clarks* in ſeveral diſtributions of imployment, *Doorkeepers*, *Meſſengers* or *Serjeants*, to commit and impriſon men for not obeying their orders; order and allow of *Fees* to be taken by their *Officers*, appoint certain days and times for ſeveral ſorts of buſineſſe, and have their vacations or *intermiſſions*, in which Committee or Court now a breeding, although every man hath a liberty of pleading or ſpeaking in his own cauſe, yet becauſe he that was never there before, may hurt, or miſchief, or perplex his own buſineſſe, or go a longer way about, for want of the knowledge of the ways or *courſes* there holden, or what is fit to be asked, or is uſually, or ordinarily granted, moſt men that have to do with them, are ſo unwilling to be without the help of *Lawiers*, or thoſe that can inſtruct them, as they make uſe of *Sollicitors*, and thoſe that are not *Lawiers*, to move and plead for them, inſomuch as little Mr. *Kirk* formerly a Clark of the Committee of the indempnity, and Captain *Smith* formerly a *Tradeſman*, do conſtantly

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appear and plead at that Bar in their black Caps, with great bundles of *Breviats* and papers, as if they were grave professors and *Serjeants* at Law; So as it may be rightly enough concluded, that until there shall be (which God forbid) a prohibition against all *reason*, the Laws which are but right reason, cannot be totally taken away, or if they shall receive a change from the old right way of reason, to a new and round-about way of it, there will be a necessity of making use of them again for the people, and the reason that hath heretofore guided them, ~~can no more be kept from~~ the ~~same~~ paths they have *troad* in all this while, or some other made very near, or like unto them, than they will be from all manner of reasoning, or use of their natural *Logick*, though the art of *Logick* should be forbidden to be used, or the use of medicines, though that most necessary art and profession of *Physick* be banished out of this *Common-wealth*, for which, they that shall thus propose the casting away of the old Laws, and Rules of reason, will at the best get no more thanks of the *Major* part of the people, than a *Physician* shall have of his patient, for putting him out of a competency of health, into an absolute sickness, and leave him after many years troublesome course of *Physick*, and dyet, to find his way (if he can) again into his former condition.

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But lest these that thus trouble themselves to bring trouble upon a whole Nation, as well as themselves, should so over-*esteem* that which they intend to put in the room of our good old Laws, and Customes, as to think no losse or ruine so great, but may be recompensed by what they offer instead of it; It will not be amisse to examine by the rule of right reason, and what

hath happened formerly, and what is like to come by such propoſals (if they ſhould be granted) and how far thoſe kind of new ways may amount to a happineſſe of the Nation.

CHAP. VII.

That the erecting of ſo many new Courts, *as are propoſed, or the cutting and tranſlating the great* Courts *at* Weſtminſter, *into ſo many little* Juriſdictions, *will (beſides the before-mentioned* Inconveniences) *not only be very prejuditial to the* State, *but to the people.*

THe *cantoning* or cutting of the Courts at *Weſtminſter* Hall into ſo many *County* Courts, or parts (as ſome have propoſed) will if there ſhould be but a ſtanding Court in every *County*, (except *London* and *Middleſex*) make almoſt as many great *Courts* in *England* and *Wales* (beſides thoſe carkaſes of Courts, which ſome are content to leave at *Weſtminſter* to determine *Appeals*, and other neceſſaries to that *contrivement*) as there will be *Counties*, the yearly allowance or Salarie of whoſe *Judges*, if they ſhould have but two *hundred* pound *per Annum* for every *Judge*, according to the number of *Five* in every *County* Court of *Fifty*, will amount to 50000 l. *per Annum* more charges than the Commonwealth is at already for *Judges* Salaries.

And when they ſhall be thus paid and furniſhed out, will (if Lawiers ſhall be ſo much *excluded* from being Judges as hath been propoſed) be as to Four in every Five of them, meer Strangers to the *Laws* of the Land, or know ſo little of them, as not to be relyed upon for their Judgements. For we cannot ſuppoſe that the eleven

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Judges in the Courts at *Westminster* Hall are intended to be any of them, or can be at one and the same time at *Westminster*, and in these new County *Courts*, or serve, or be enough to make one, in every of these Fifty County *Courts*, as some would contrive it, to sit with these new County Judges, who having (as is to be feared) not read much of men, or books, will have no ground or capacity for knowledge to grow in, nor any thing of parts or *learning* to build up an *ability* withall, but be willfull, or obstinate in their ways or opinions for want of better understanding, or domineering, because they shall not be able to know when they do *well* or *ill*. And if they should be *honest* (which perhaps will not alwayes happen) their want of knowledge of the Laws, and the rules they should go by; their not knowing how to understand what shall be said to them, nor what answers to give; their inability to expound the Law by other Laws, or make a right construction of the words or meaning of Deeds or Parties, or to distinguish and divide betwixt *truth* and falshood, *right* and wrong, reason and pretences of it, colour or reality, or how to find the difference betwixt the Cases or *Evidences* that shall be urged by the one side or the other, or to state the matter of Fact, or to sever the point or material part from the circumstances, will make them as fruitfull in their oppression as in their *errors*, and mistakes, apt to be *led* or *mislead* by their fellow *Judges* that shall be Lawiers, or (which will be worse) to be like *wax* taking the impression of every mans *Seal* that shall be last clapt upon them; be directed by a *Wife*, or *Clerk*, or some other simple or knavish *favourite*, that shall broak and trade in every cause that shall come before them, and be sure to abuse it.

Trouble and delay the people with needleſſe ſcruples and niceties, by making *Quæries* or doubts of that, which to others would be common and eaſie, and ſtumbling at every word that comes not up to their *apprehenſions*, give advantage to knaves, and put men to ſeek indirect Courſes or ways to ballance the *Judges*, becauſe they dare not truſt them to do that which they ought to do; hurt rather, than help ſuch as ſhall be innocent and oppreſſed, or are not allowed Counſel to plead for them, make them be ready to allow of all the reaſons given by the Plaintiffs Counſel, and as ready to approve of that which the Counſel for the Defendant ſhall urge againſt it, and for want of knowledge to guide them in their Judgements, to be incertain, and inſtable, making an order one day at the inſtigation of the Plaintiff, and another the next day quite contrary to it at the requeſt of the Defendant, be like *Feathers* blown with every wind of Doctrine, and like *Bowls* run only according to the *Byas* ſhall be put upon them; one will like the *Mole* in the Fable, think himſelf the moſt clear ſighted of all his fellows, another help to miſlead himſelf, and others by endeavouring to make men believe that which he ſpeaks is from *Chriſt Jeſus*, when he never *ſpake* with him, or knows how to expound his written word; another will have a fancy of the *Spirit* or think himſelf guifted, when he himſelf would not truſt the moſt *guifted* Trades-man to ſettle a Daughters *joynture*, or make his Conveyance, & when they ſhall have nothing of learning or Law to make uſe of but their own will & weak apprehenſions, will make ſuch kind of Juſtice as will be had from them more *arbitrary* than that of a Tyrant, whoſe will and purpoſe of governing without *Laws* when he knows them, cannot

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be ſo laſting and dangerous as the will of thoſe men of ignorance, which ſhall be only guided by the neceſſity of an *invincible* ignorance, and may prove to be a greater oppreſſion to the people, than if thoſe that ſhall be thus made to be corrupt, or to do like unrighteous Judges had been knowingly wicked, for that the one ſort doth commit numberleſſe *errors* by not knowing them, and the other committs but a *few*, becauſe they dare not adventure to do it often. Whereas the old conſtitutions and courſe of the Laws of *England* (as ill as the propoſers think of them) knew how to ſerve the people better, by making choice of ſuch men for Judges, as by Seven years ſtudy in an *Innes* of Court, or *Colledge* of Law had come to the degree of *Barreſters*, And from thence after a great number of years practice, and continuance of Study to be *Readers* of the Law to the Innes of Court, whereof they were, after that *Serjeants* at Law, and after that for their eminency of parts and honeſty to be *Judges*, where by a continual Study, obſervation, and practice of the Law from their age of 16 or 17. until they came to be (as it moſt commonly happens before they come to be Judges) above *Threeſcore* years of age, they became to be great Maſters of reaſon, and ſo fully experimented in the whole body of the *Law*, and Cuſtoms of the *Nation*, as by their knowledge therein, and of the *Civil* and *Cannon* Laws which border upon them, and ſo many *Caſes* and experiments as had in all that time paſſed through the courſe of their Studies, and practice, as they were *honourable in the gates of their people*, and appeared compleatly able to contradict or rectifie Hundreds of other *Lawiers* that moved or pleaded before them, and not only to adviſe the Supreme *Authority*, when they were called

led to it, concerning the making or executing of Laws, but to apply fit remedies to every mans action or grievance that came before them, and had all their life after no other *Trade* or profeſſion to divert or call off their *thoughts* from a continual Study of the Law, and right adminiſtration of juſtice.

But if it ſhall be ſaid, that all that *Catalogue* of evills will be prevented by a carefull choice, or election of ſuch as ſhall be made Judges, out of the beſt, or moſt knowing of the people, that will but little amend the matter, when the *Lawiers*, all but ſuch as ſhall be choſen to make one of the five in every County (who as to the Adminiſtration of Juſtice are the beſt and moſt knowing of the people) ſhall be laid aſide, and forbid to be choſen, for there muſt needs be a ſtrange election, when *blind* men ſhall be imployed to buy pictures, or the Boys in every pariſh to chooſe their School-maſters. And if there could be any election without the guide or direction of a party or faction, it will not be uneaſie to gueſſe, whether the *Self conceited*, well *known*, little *wiſdom* of the *multitude* doth moſt commonly carry them, or to believe that the knowledge of the Law, in one of every 5 of thoſe Countie Judges, when 4 or the Major part of them ſhall be at liberty to be ignorant, ~~will as little help the buſineſſe~~, as *Alexander* the *Copper-Smith*, and *Demetrius* the *Silver Smith* did *Paul* in the preaching of the Goſpel, or if it ſhould happen that one of every five of thoſe *Judges* of the County Courts being a Lawyer (though it may by, they may be ſuch as have have only the name or Title of it, or for want of practice have loſt, or are to ſeek what they have read of it) ſhould be ſo much relyed upon for their judgements, as to be able to guide and govern

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the reſt which are no Lawiers, To what end ſhould the Common-wealth be at the charge of ſuch *Ciphers*, or thoſe *Ciphers* ſhould only ſit to receive or take ſuch *Figures*, as the Suitors or people ſhall add unto them? The Lawier-*Judges*, if they chance to be as wiſe as *Vlyſſes*, will be but ſet to plow with ſuch kind of *Cattle* as he did; and therefore it was not unwiſely ſaid to King *Iames* by the *Conde de Gondomar* that grand *Spaniſh* politician, who when he had demanded of him, what was the reaſon he had put the Lord Chancellor *Bacon*, who was ſo eminent a wiſe man out of his place, and left in the *Chancery* Sir *Iulius Cæſar*, who by his ignorance committed many more errors, and the King had anſwered him, that the *Parliament* adviſed & importuned him to put him out, becauſe he was a *knave* (though in truth it was only ſome of his corrupt ſervants had abuſ'd him) replyed, that they had a *Proverb* or ſaying in *Spain*, that it was better to have a Thief in a *Vinyard*, than an *Aſſe*, for that the one took but what he ſtole without ſpoiling the *Vinyard*, but the other trod down and ſpoiled all before him.

Which may come to be ſadly enough experimented in our own caſes, when the liberties and *properties* of the people ſhall be loſt, and made uncertain by thoſe that ſhould take a care of them; when thoſe that ~~ſhall~~ *ſhould* be as the Watchmen of *Iſrael*, and neither ſlumber nor ſleep, ſhall have neither eyes to ſee, nor ears to hear, neither underſtand their Office, or know how to execute it, wherein it is not the well meaning of thoſe that ſhall undertake ſo weighty a buſineſſe, will be able to protect them from the great ſin of preſumption, which they ſhall incur by taking a charge upon them they could not perform, nor *ſecure* the people from the

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damage and losses they shall sustain by them, when time and authority shall beget in them a power, and that power like a Loadstone, draw in and allure factions and parties, and those factions and parties busie themselves in misleading their good intentions, out of the narrow and seldom troden path of *Righteousnesse*, into the great road of partiallity and oppression.

From whom if there should be no appeals, or seeking further for Justice, it would not only be contrary to what was counselled by *Jethro*, ordained by God himself, and practised by *Moses* in bringing the most difficult causes, or those that could not be determined in the smaller Courts, to the Judgement of higher Courts, or the Supreme authority, but to all other Laws and governments of the world whatsoever, and make every one of those new little Courts to be too much independent.

Or if there should be an allowance of appeals, make as many, if there should be but a hundred in a year, from every one of those new County Courts (which is like to be the least at the lowest computation) for if there were no real grievances, many will as they did, and do still use to doe in the the Civil *Law*, Appeal to win time, or shelter themselves from the extremity of an adversary) as may amount to 5000 in every year, and every of those appeals bring to the people so many second *hearings*, and a double expence of time and money; from which also, if there should be any Law made to obstruct or hinder them, by some mulct or sum of money, ordered to be paid or deposited upon the bringing of every appeal, so as few shall have the mind or *ability* to goe through with it, that will but raise the discontent and cry of the people higher, when they

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ſhall find themſelves ſent on an *errand*, to receive Law or Juſtice from thoſe that underſtand it not, and for want of underſtanding in their *Judges*, be caſt either into a greater controverſie, or an appeal to complain of a grievance, and when they think they ſhould have better Juſtice, muſt not have it, becauſe they cannot be at the price or *hazard* is put upon it: Or if the Judges ſhould be fined, as ſome would have it, for their errors (thongh by the Law as long agoe as King *Edgar*, a Judge was not to be fined, if he would make oath, that he did as well as he could, or that he did it only by *error* or miſtake, and not of *Malice*, or by corruption) they that have any wit or eſtate, will rather quit their places to ſuch as have neither of them, then take upon them, or continue ſuch a place of continual hazard and unquiet, and then the matter will be fairly mended, and beſides, there will be no ſmall difficulty at any time to aſſign or faſten the errors upon the Judges, who it may be for want of skil were miſlead by the Plaintiffs or Defendants themſelves, or had not the matter or fact clearly ſtated before them, and then there will be no reaſon to lay the fault upon the Judges, when they did as well as they could, and they might have choſen wiſer.

In ll Edgari cap. 1 & in Guliel. 1 cap. 15

Such new County Courts will beget in every Province ſeveral Laws and *Juriſdictions* or power (for as long as there ſhall be inequality of riches or places (which ever was and ever ought to be) there will be powers, and authorities over-awing one another) one power will grow greater than another, and perhaps too powerfull for the other parts of the Government, and commit all manner of injuſtice and oppreſſion.

The *Juſtice* of the Nation, which next to the Military

and protection part of it, is and ought to be the greatest care of the Supreme power, and is so much the more Superior to the other, as it is the end of it, and not only helps to put the Sword again into the *Scabbard*, when it is drawn, but very much conduces to keep it from comming out again, and is in the ordinary execution thereof at this time trusted out into lesse than twelve hands in the ordinary Courts of Law at *Westminster*, will by these proposals upon very small security be trusted and put into the hands of Two Hundred and Fifty men more, who will want that *wisdom* as well as *estates*, which the other have to make them responsal; whereby the Supreme power of the Nation, may by its being too much divided and diffused into such lesser bodies, come to want that strength and intireness it hath formerly had and enjoyed in the several succession of Kings for almost One Thousand years together, by keeping their residence in the chief Citie or part of the Nation, As *David* and the Kings of *Juda* did at *Jerusalem*, and as all other Kings and Estates do in other Nations, with their chief *Courts* of *Justice* about them, where the *pulse*, contents and *discontents* of the People, from all parts of the body *Politicque* may be felt, whither all their Complaints or principal businesse might *Circulate* and come, and passe to and fro, like the *blood* from all parts of the Body, to the *Heart*, and from thence back again to all parts of the Body, and whither the Common sense did from time to time bring in its Intelligence to the great *Counsel* which was holden in the *Brayn* for preservation of the Heart as well as every part of the body.

They that heretofore could with one expence and charges prosecute a suit at Law at *Westminster*, and at the

the ſame time attend the *Parliament*, or their *Committees*, the Council of State, the *Exchequer* or Committee of revenue, and the motions and deſigns of their adverſaries, who it may be had bills in *Chancery*, or actions in ſome other Court of *weſtminſter* depending againſt them at the ſame time, and do many other buſineſſes whilſt they remained there, meet and confer with Friends, or Foreiners, or people of all parts of the Nation, could make bargains, and diſpoſe of Children, and have the help or aſſiſtance in their Suits at Law of the ableſt & moſt eminent Lawiers in their ſeveral Innes of *Court* or *Stations*, muſt now perhaps goe to the Shire Town as a Plaintiff or Defendant at Law, and to *London* for his other buſineſſe, & be content with ſuch Lawiers only in his own Country as are there reſident, when it may be there are none eminent, or very able, to be had there, or be inforced to procure ſuch as are to come at great rates, one hundred or Two hundred miles at a time, from the places where they inhabit, and that Country and many a more diſtreſſed Client want them in the mean time.

Such a multitude of Courts will throw many men, eſpecially ſuch as have great dealing and multitude of buſineſſe with men of many Counties, into ſo many journeys and perplexities, as they ſhall never be at leiſure from attending one Court or other, whereas now one man that hath occaſion to proſecute Actions of debt againſt one *Hundred* Debtors living in 20 Counties, diſperſed over the whole Nation, doth his buſineſſe without Travelling or ſending any further than to *London*, Streightens and gives men no time to provide their evidence or Witneſſes, and puts the Lawiers as well as their Clients by ſo much atten-

dance at ſo many ſeveral Courts into a continual attendance or Travelling from one Shire to another, and will not a little diſtract mens affairs, to have an Action at one and the ſame time to be tryed or called upon at *London*, *Cornwall*, *Barwick*, and *Pembroke* Shire, where they ſhould be perſonally at every one of them, and can be but at one, and muſt be in a continual unquietneſſe and trouble, when all the year ſhall be as a continual Term, or time of controverſie, and when they ſhall be enforced to neglect their affairs of Husbandry and Harveſt, to travel and tire themſelves through all the lines of the *Circumference*, when they might have a ſhorter way to and from the *Centre*, which by the intermiſſion of Terms and Vacations, and the known and convenient times of *Aſsizes*, when the Terms were ended, was by the Laws now in being ſufficiently prevented.

But theſe are not like to be all the inconveniences neither, for if the Courts of *Weſtminſter* ſhall beſides the Two and Fifty County Courts to be taken out of them be cut into leſſer pieces, by giving cogniſance of pleas, of Actions, of Treſpaſſe, Battery, and the like, and of Actions of debt under 40 ſhillings as ſome would have it, there will then be as many ſmaller Courts as will make us up above 2600 Courts, the Judges whereof will look to be paid as well as the Judges of the other Courts for the neglect of their own buſineſſe, to take care of other mens, and if they ſhould have but 50 l. *per annum* a peece for ſtanding ſalaries, will make a yearly charge to the State, of above ~~Sixty Five~~ Thouſand pounds *per annum*, or if they ſhall be prohibited their taking of Fees, will grow careleſſe and nnwilling to be troubled, pretend to be ſick or abſent when they

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are not, or half hear causes, or like some of the *Middlesex*, or Suburbian Justices take a great deal more in Fees and *Incomes* than that would come to, and doe as little for it as they use to doe in matters of Breach of ~~this~~ the Peace or petty Brawls, which is to bind them over to the *Sessions*, and take their Fees for it, and for those causes which they shall adventure to determine beget in a year more appeals than there shall be Justices of the peace, which in a year but after the rate of 2600 petty Courts or more, but 40 Times appealed from, every one of them will yeeld to the people above One Hundred Thousand appeals, which may cost them no small mony & time to maintain, and bring to a hearing, and by such double and treble agitations, discovery of Titles, and evidence, and half hearing of their causes, make their contentions grow as endlesse as their Charges.

CHAP. VIII.

That it will not only raiſe up again thoſe old grievances, which were formerly the cauſe of diſuſing, or reſtraining the Sheriffs Turns, County Courts, *Court* Barons, *and Hundred Courts, and ſuch like petty Juriſdictions, but far exceed them.*

But ſurely they that thus erre for want of knowledge, and do too much build upon their own *ignorance*, would, if they knew the reaſons that accompany our Laws, not be ſo forward to goe back again into thoſe evils which our Auncеſtors and the care of former *Parliaments* did bring us out of, nor take that to be a new and better way, is but a going back again into them, and a reviving of old grievances.

We ſhall therefore ſhew them, what they were, & let them ſee they are very like unto that they are now ſo willing to eſtabliſh amongſt us. The Courts called Hundreds, *Wapentakes*, & the County *Courts*, had their original by conſent of moſt Authors from K. *Alfred*, who (*n*) would not truſt them with Capital or Chief matters Criminal, but reſerved them *ad Majores Juſtitiarios*. And though he gave them power to determine leſſer matters, yet did he as well as King *Ina* his predeceſſor, and thoſe *Saxon* and *Daniſh* Kings, *Edward* the elder, *Athelſtane*, *Ethelbert*, *Edgar*, *Canutus*, and *Edward* the Confeſſor which ſucceeded him, give leave to any to appeal, *pro defectu Juſtitiæ*, or when right could not be obtained.

(*n*) *Polidor in Guliel. Conq. Spelman Gloſs. in verb. Juſtitia*

But that being in a time when the ſmallneſſe of Commerce, paucity, poverty, and inculture of people, little acquaintance with Navigation, or Forein Cuſtoms, continual wars one with another, in a *Heptarchy*

chy, or multiplicity of Kings, and Invasions of the *Danes*, could not allow them much businesse at Law, and if they had wherewithall to have been contentious, were so bound up by certain strict Laws, fit only for a people were newly escaped out of *Paganism*, and lived in a Country more like a desart or *Wildernes*, than as now it is, as they could not if they would have many Suites at Law to trouble the lesser or greater *Courts* withall, for in every Tithing (*o*) or *Friborgh*, every man answer'd so for one another, as they were bound to bring offenders to Justice, every (*p*) man did put in securities to do right to one another, the Lord for (*q*) his Tenants, and the Master for his Servants; (*r*) no man bought any thing without a pledge or voucher, or exchanged goods but before a Magistrate, or the Minister, or Lord of the Mannor, he that (*s*) received a Stranger, answered for any thing (*t*) he had done in the place from whence he came; no man under a penalty harboured a *Fugitive*, or kept him from Justice, he that was misdoubted (*u*) or accused, was in many things to purge himself, by his own oath, or of so many of his neighbours, & if any had (*w*) complained before they had demanded right in those lesser Courts, were fined and punished.

Yet though those Courts had their work so much done to their hands, the people were so little notwithstanding satisfied with their Justice, as we shall find *William* the *Conquerour* afterwards to have his Chief *Justice* to attend him for the determining of such causes as came to demand his Justice, his Son *William Rufus* the like, and by that time the Crown came to *Henry* the first, who was not also without his Chief Justice, the Laws began to take notice of the different Laws of Provinces, of a *penuria Iudicum* in (*w*) some Hundreds, & of violences & disturbances,

(o) *In ll. E. Confes. cap.* 20.

(p) *In ll. Edgari c.* 6 & *in legibus Ethelredi cap.* 1.

(q) *In ll. H.* 1. *c.* 23 *et* 41. *in ll. Canuti c.* 25 & 28. & *in ll. Ethelst. cap.* 10.

(r) *In legibus Edw. Reg. cap.* 1.

(s) *In ll. Alured c.* 33. & *in ll. Ethelstani cap.* 8.

(t) *In ll. E. Reg.* & *in ll. Canuti cap.* 64.

(u) *In ll. Inæ. In ll. Edgari c.* 2 & *l. Canuti c.* 16.

(w) *In ll. H.* 1. *c.* 7.

bances, which made [a neceſſity of carrying ſome cauſes upon denyingright to be done in thoſe Courts to the County Courts, (all actions of breach of the peace, and pleas of Treaſons, Murder, Coynings of monies, and many more which are enumerated in his Law *de Jure Regis*, then belongingto the King.)

King *Stephen* had his Chief Juſtices, and when King *Henry* the ſecond comes to raign, the *Kingdom* was ſo full of exactions and oppreſſions, as he is much troubled how to find a man fit, and honeſt enough to make a Chief Juſtice of, though he had tryed Abbots and *Earls*, *Commanders* and Souldiers, and Spiritual men as well as Secular, and therfore we find him upon the peoples Complaints of their want of juſtice from ſeveral parts of the Kingdom in a Parliament at *Nottingham in Anno Domini* One Thouſand One Hundred Seventy Six, (in imitation of what had been formerly done in *France*,(x)by *Carolus Calvus in Anno Eight Hundred Fifty* and *Three*) ordaining Iuſtices *Itinerant* or in *Eyre* according to their allotments of ſeveral *Shires*, but all Fines levied in the Kings Court, Actions of debt, writs of Aſſize, Dower, advowſon, and all or moſt pleas of conſequence brought and held in the Kings Courts (except ſuch as were ſometimes allowed by his *writs* or Commiſſion to be determined in the *Sheriffs* Court or the Hundred, or Courts Barons) for any might then remove an Action from the leſſer Courts to the *Kings*, or have an *Accedas ad Curiam*, or prohibition, if we may believe *Glanvil*, (y)who was his Chief Juſtice.

Chronic. Jo Bromton.

(x) *Spelman Gloſſar in verb. Juſtic. Itinerant.*

(y) *Glanvil lib.10.c.1. lib.11.c.1. lib.12.c.7. 3 c.3.et 5.*

In his Son *Richard* the firſt his time the power and privileges of *Sheriffs* did grow ſo great in their Counties and Courts, as ſome *Biſhops* whoſe places in thoſe times led them quite off from *Secular* imployments, were in-

ticed

ticed to take upon them the Offices of *Sheriffs*, but were queſtioned for it afterwards, and forbid by the *Pope* to intermedle any more in them. But about 9 *H* 3. the Complaints of the people did ſo follow the King and his Chief Juſtice, as it was enacted by Parliament that *Common pleas ſhould not follow the Court, but be holden in ſome place certain*, in 52 H. 3. Complaints were made in *Parliament, that great men, and diverſe others, refuſed to be juſtified by the King and his Court, as they ought and were wont to be, in the time of his progeniors, but took great revenges and diſtreſſes of their Neighbours, and others, until they had amends and Fines at their own pleaſure; And would not ſuffer delivery of ſuch diſtreſſes as they had taken of their own authority, diſtrained men to do Suit to their Courts, that were not bound by their Deeds or Enfeoffments, amerced men wrongfully for default of Common Summons, and compelled Freeholders to anſwer for their Freeholds without the Kings writ.*

9 H. 3. c. 11
52 H. 3. cap. 11.
Eodem Anno c. 9. c. 17 & 22.

In the reign of his Son *E.* 1. as appeareth by *Britton* who compiled a book of the Laws by the Kings appointment, all men by a Publick *Cry* and proclamation were to come with their plaints, cauſes, and actions before the Juſtices in *Eyre*, when they came into the *Counties*, and all other pleas to *Ceaſe*, and all thoſe who claimed any *Franchyſes* were to ſhew their Title to them, and ſpecial enquiries made of *Sheriffs*, *Bayliffs*, and *Stewards*, concerning the execution of their *Offices*, maintaining *Quarrels*, amercing men wrongfully, committing *extortions*, and holding pleas in debt or treſpaſſe above *Forty Shillings*, which did not belong to them, 3 *E.* 1. *cap.* 15. *Sheriffs and others did let out of priſon ſuch as were not repleviſeable, and kept in priſon ſuch as were*

Britton c. 2. 20, 21.

Beasts were distrayned and carried into another County; Great men and their Bayliffs *did attach and arrest others, passing through their Jurisdiction, and compelled them to answer upon Contracts Covenants and Trespasses* done out of their power *and Jurisdiction,* 13 E. 1. cap. 13. *Sheriffs did in their Turnes feign men to be indicted before them for felony, and Trespasses, and imprisoned them, and exacted money of them, when they were not lawfully indicted by Twelve Jurors, Lords of Courts, and others that kept Courts and* Stew-
cap. 36. ards, *intending to grieve their* Inferiors, *did procure others to enter Actions in their Courts, and to move matters against them, and to put in sureties and pledges, or to purchase writs, and compel men to follow their* Countie *Courts, Hundreds, Wapentakes, or other like Courts, until they had made Fine at their will, Sheriffs, Hundredors, and Bayliffs of liberties, did use to grieve such as were in subjection to them, putting in Assizes and Juries men diseased and decrepit, and such as dwelt in other Counties, to extort money from them, and Bayliffs intending to grieve their Inferiors to the end they might exact money of them, did send Strangers to take distresses, by reason that the parties so distrained, and not knowing such persons, would not suffer the distresses to be taken;* 33 Ed. 1. *Stewards and Bayliffs of great Lords did undertake to bear, or maintain quarrels which concerned other parties.* 28 E. 3. *Great*
cap. 3. *men came armed and with power to disturb the execution of Justice,* 4 E. 3. cap. 11. *Diverse as well great men as other made Alliances, confederacies, and conspiracies, to maintain parties, pleas, and quarrels, whereby divers were wrongfully dis-inherited, ransomed, and destroyed.* 14 Ed. 3. cap. 16. *Enquests and Juries were taken in diverse Counties where no Justice did come, to the great mischief of the Parties that did sue, as also of the good people that were impannelled, and Sheriffs did let their Hundred Courts at great rates,*

to

to the impoverishing and oppression of the People. 17 E. 3. The Commons Petition that excessive Fines imposed on them by such as have Lees might be redressed, 20 Ed. 3. cap. 6. Bayliffs of Franchises, and their under-ministers did commit maintenance, and imbracery of Jurors, and took gifts, rewards, and other profits, which they did take to array pannels, and to execute them, to the subversion of the Laws, and disturbance of Common right. 31. Ed. 3. cap. 15. Sheriffs held their Turnes in time of Harvest, and hindred the people. 20 Rich. 2. cap. 10. Notorious Theeves were delivered by favourable inquests procured to the great hinderance of the people; Lords, and other great men did use to sit upon the Bench with Iustices of Assize. 17. Ed. 4. cap. 2. Courts of Pypowder were misused by Stewards, Vnder-Stewards, and Bayliffs holding pleas for contracts made out of the Fairs. 1 Rich. 3. cap. 4. Diverse inconveniences and perjuries did dayly happen in diverse Shires of England, by untrue verdicts before Sheriffs in their Turns, by persons of no behaviour, nor dreading God, nor the worlds shame. cap. 6. Courts of Pypowder were misused by Stewards and Bayliffs upon feigned plaints to trouble men to whom they owe evil will to make men lose their Fair, or to get favourable inquests, whereby many coming to the Fairs were grievously vexed for contracts made out of the Fair, The Lords lost their profits of their Fairs, and the People wanted those merchandises, would otherwise come to them. 11. Hen. 7. cap. 15. Great extortion was used in divers Countries, by Vnder-Sheriffs, Shire-Clerks, and other Officers, holding and keeping County-Courts, and in the name of the Sheriffs, by entring Plaints without the Plaintiffs direction against Defendants, to the intent that if they appear not, they may be amerced; or entred Plaints in the name of such as were dead, and to that end did not at all attach or summon the Defendants, but caused the said amerciaments to be levied. 3 H. 8. cap. 12.

Rot. Parl. in 38.

cap. 3.

Great extortions and oppreſsions were by Sheriffs, and their Miniſters, by impanelling ſuch as will be perjured. 26 Henry 8. cap. 4. *Juries in* Wales *gave untrue verdicts, becauſe upon indictments of Murder, and Felons, the Kindred and Friends to ſuch offenders had acceſſe to them.*

27 H. 8. cap. 3. *Divers oppreſsions, maintenance, imbraceries, riots, treſpaſſes, &c. were in* Cheſter *and* Wales, *by reaſon that common juſtice was not adminiſtered there as in other places, by reaſon of a diverſe miniſtration of Juſtice.*
cap. 24. *Diverſe authorities of juſtice appertaining to the King had been granted away, to the great hindrance and delay of Ju-*
cap. 26. *ſtice. By reaſon of diverſity of Laws and uſages in* Wales *and* England, *great diſcords, variance and ſeditton have riſen betwixt the People.*

Which irregularities of Small *Courts*, ſo all along from time to time complained of in Parliament, were not only the cauſe of making thoſe many Acts of Parliament in thoſe ſeveral years to redreſſe thoſe *grievances*, but of the making of ſeveral other Acts of *Parliament*: As that in 13 *E.* 1. *cap.* 30. authoriſing Juſtices of *Niſi prius*, to go at certain times of the year into the *Counties*; that of 27 *E.* 1. *cap.* 3. and 4. to make thoſe *Iuſtices* of Aſſize *Iuſtices* of Gaol delivery, and that enqueſts and recogniſances taken before *Iuſtices* of either *Bench* ſhould be taken in time of vacation before any of the *Iuſtices* before whom the *plea* is brought. That of 28 *E.* 1. *cap.* 10. that againſt *Conſpirators*, falſe informers, procurers of enqueſts, and *Iuries*, remedie ſhould be had, by a writ out of the *Chancery*, and that the Juſtices of both Benches and Juſtices aſſigned to take *Aſsizes*, ſhould, when they come into the Country, upon every plaint made unto them, award enqueſts. That of 12 *E.* 2. *cap.* 3. and 4. that enqueſts and Ju-

ries

ries in pleas of *Land* that require great examination, ſhould be taken in the Country before two Juſtices of the Bench, and that which they ſhall have done ſhall be reported in the *Bench* at a certain day there to be inrolled, and thereupon Judgement ſhall be given; And to provide that inqueſts and Juries ſhould notwithſtanding be taken in the Bench if they came. That of 2 *E.* 3. *cap* 2. that Aſſizes, *Attaints*, and Certifications be taken before the *Juſtices* commonly aſſigned, which be good men and lawfull, *having knowledge of the Law*, and none other. That of 14 *E.* 3. *cap.* 16. that *niſi prius* ſhall be granted, as well at the Suit of the Defendant as of the *Plaintiff*, and before a Juſtice of another Court, then where the Suit dependeth, and if it happen that none of the Juſtices of the one Bench or the other may go into the Country, then *Niſi prius* to be granted before the *Chief Baron* of the Exchequer if he *be a man learned in the Law*, and in caſe he cannot go, then before *Juſtices* aſſigned to take aſſizes in thoſe parts, ſo as one of the ſaid Juſtices aſſigned be Juſtice of the one *Bench* or the other, or the Kings *Serjeant* ſworn. That of 20 *R.* 2. *cap.* 10. that two learned men in the Law Juſtices of the peace ſhall be in Commiſſion of Goal delivery. And of making the ſeveral Acts of Parliament, 28 *E.* 1. *cap.* 14. 9 *E.* 2. *cap.* 4. 4 *E.* 3. *cap.* 5. 9. *E.* 3. *cap.* 3. 14 *E.* 3. *cap.* 7. 28 *E.* 3. *cap.* 7. 1 *R.* 2. *cap.* 11. & 1 *H.* 4. *cap.* 4. That none ſhould be Sheriffs and Bayliffs for above a year together, or but ſuch as had ſufficient to anſwer the *Complaints* of the people; that Bayliwicks, and *Hundreds* ſhould not be let to Farm at over great Rents; that Sheriffs *Clerks* ſhould not practiſe as Attorneys during their office; the Act of *Parliament* in 28 *E.* 1. *cap.* 4.

That

That the *Chancellor*, and the *Juſtices* of the Kings *Bench*, ſhould follow the King, that he might have at all times near unto him ſome that were *Learned* in the Laws, which might be able daily to order ſuch matters as ſhould come unto the *Court* at all Times when need ſhould require; that of 28 *E.* 1. *cap.* 7. That the Conſtable of *Dover* ſhould hold no pleas within the Caſtle gate, but ſuch as did belong to the keeping of the Caſtle; that of 30 *E.* the *firſt*, to queſtion by *Quo Warranto* all liberties to which there could not be a good Title ſhewn, for that to the *King* belonged the care of execution of *Iuſtice*: And that of 9 *E.* 3. *cap.* 5. at the requeſt of the *Commons*, that Juſtices of Aſſize, *Goal* delivery, *Oyer* and Terminer, ſhould every year at *Michaelmas* ſend their records to the *Exchequer*.

And did put the Kings of this *Nation* into ſuch a continual watchfullneſſe and care of the due adminiſtration of Juſtice to be done in the Counties and remote parts of this Nation, as the Juſtices of *Aſsize* never went their *Circuits*, but they either attended the King or his *Chancellor* to know what ſpecial matters were to be given in charge to the people, and did at their retorn upon any extraordinary thing that happened in their *Circuits*, give him, and his Council an account thereof; and yet notwithſtanding all this their care, and the ſending of Juſtices twice a year into every County, which did much awe, and keep in order thoſe *County* Courts, Sheriffs *Turnes*, and the *Actions* of Stewards in their Court Leets, and Court Barons, and that the wiſdom of former times took all the care they could to have the hundred *Courts*, Courts Leet, and Courts *Baron*, Countie *Courts*, and Sheriffs *Turnes*, to be executed by able and honeſt men,

as

as we may see in the reign of King *Henry* the first, who would not allow, *viles & inopes personas*, to be *Legum Judices*, or *Stultos aut Improbos*, *sed optimates qui non personam sed opera dijudicent*. And that *Bayliffs* were long after Characterd by *Fleta* to be *moribus & legibus pro officio sufficientes*, and the Stewards *in legibus consuetudinibusque Provinciæ, & officio Seneschalciæ cognoscentes*; and that those *Franchises* and little Courts were forfeitable by a *misuser* of them, all the care could be possiby taken to prevent it, nor the punishment or forfeiture which hung over them, could not so restrain or keep them in order, but that there were daily complaints made of them, and writs obtained from the Kings Courts to remedy them, as writs of *right patent*, *Ne injuste vexes supersedeas*, writs of *right*, writs of *Pone*, *prohibitions*, writs of false judgement, de *executione judicii*, *Recordares*, *accedas ad Curiam*, *Certiorares & habeas Corpora*, to remove causes, writs to take one in *Witherman*, that would not suffer a man to be replevied, and writts of *Error* to County Courts. Insomuch as the people were in the sense of their own *grievances* which were never like to fail them in those *inferior* Courts, and those natural *inclinations*, and propensities, which are in all Mankind to the *best* things, and that which may *soonest* accomplish their *ends*, so brought (especially when they found that the Stewards or *Judges* of those inferior Courts could not hold any *proportion*, or stand in the *ballance* with the Judges at *Westminster*) by degrees to a contempt and waving of the Countie *Courts*, Court *Barons*, and *Hundred* Courts, as they became to be generally *disused*, or laid aside (the people seldome appearing at them, when they were summoned, and the Stewards as seldom keeping of them.)

in ll H. r. c. 9 & 29.

Fleta lib. 2c. 60 & 65.

Regiſter of writs.

For

For though it must be *confessed* that it may be possible that some few men may by such new *Countie* Courts save some labour, charges, or trouble, for once, or a a little while, as their particular cases or conveniences, neighbourhood, or conditions of adversaries may happen to be (for no doubt but there were some that did find good by the Courts of *Star*-Chamber, and High Commission, and the Courts of *Honour* and *Marshal sea*, and of the Marches of *Wales* and the *North* in every year of their many years or ages continuance, though they were afterwards taken away as grievances, yet those particular *benefits* which some few of the People shall receive by these new to be erected Courts, will or can as little *assure* them, or their own posterity from meeting at some other time with those many inconveniences, may happen unto them afterwards, as it will do *Thousands* more than themselves, and the whole body of the people, that shall be prejudiced by it in the *general*, for all that are or may be benefits to some particular men or places, have neither a possibility or *capacity* of being so in the general, and to all people of the Nation, or to those very *individuals* at all times, or upon all occasions, and therefore the making of a Law to forbid all *usury*, or taking profit for mony lent, would not be profitable to the people in general, nor to those men that at once might perhaps save some money in the payment of their debts, when they shall be more troubled after upon their next occasions or want to borrow *mony* than that amounted unto, nor would it be for a publick or general good, that every *Town* or *Village* in the Nation should have a *Market* kept every week it, though it might be good for some solitary Towns, in a *Forrest* or upon the *Woalds* to have it so,

nor

Nor would the Country people that can be sometimes content to supply their present or lesser occasions by the Pedlars at their own doors, be well pleased that they should therefore be restrained from seeking better upon their greater disbursements or occasions, at the well-furnished *Shops* in the *Cities*, or that they should have a *Monopoly* of only selling to them the worser sort of *commodities*.

Wherefore, let any men of Learning, reason, or impartiality judge, if all this would not do when the little Courts could not proceed in any Action above Forty Shillings, but that the people were so frequently enforced for want of Justice to remove their causes to the higher Courts, how many, very many Complaints and *grievances* there would have been if this way had been stopped or taken from them as is now desired.

Or whether the people of *England*, did any wrong to themselves, in passing by those little Courts where the *Steward* was most commonly ignorant, and the Suitors which were the Judges a great deal more, and were sure enough to meet with ignorance, injustice, or oppression, and if the cause were like to go well with them, to have it removed, upon any pretences of their adversaries, to come to the Superiour Courts, where they should be out of the danger of *Appeals*, and could not want Justice when they sought it, nor protection in the seeking of it.

Or whether they did not better to seek for Justice at the Well-head and Fountain of *Justice*, where they could not doubt of the skil and honesty of their Judges, and the assistance of able Lawiers to plead for them, or to have their Actions tryed before some of the same Judges in their own Counties at the *Assizes*, and might

be diſpatched ſooner, and with leſſe trouble and charges to both parties, than they could at a *Second* or *Third* hand, by removing their Actions from the Hundred Court to the Countie Court, and from thence to *Weſtminſter*.

The Common uſe or allowance of which more approved and convenient way, if the reaſon of it had lain hid or concealed, had been enough to tell us and all after ages, the benefit and good which the people had by it, as well as that, of making *bread* with *Wheat* inſtead of *acorns*, or wearing *cloaths* inſtead of going *naked*, when the ignorance of our older fore-fathers allowed them no better, or the peoples leaving ſome *Market* Town to talk only of their *Charter*, whilſt their own conveniences carries them to a better.

For that muſt needs be out of all *danger* of *error* or inconvenience which hath had ſo long an experimented & conſtant allowance, when there was not heretofore any *Petition* in Parliament or to any the former Supreme Authorities againſt it, and when a general uſe or convenience, not for one but for many ages ſucceſſively, hath brought it into a cuſtom, and univerſal *approbation*.

And ſhould be now of a greater *price*, then to be exchanged for all thoſe and more *grievances*, which heretofore filled our former *Parliaments* with Complaints againſt the *Countie* Courts, Sheriffs Turnes, and *Hundred* Courts (for the Cryes of the poor and *indigent*, and their many *ſmothered* oppreſſions could not always reach thither) will not only be *raiſed* up again and *reſtored* to the people with intereſt by theſe new eſtabliſhments, but far exceed them, and be like ſo many Councels of the Marches in every Countie.

But they that have ingaged their Fancies to put ſo great

great a disturbance upon the people & might in a *repentance* of it go quietly back again into their own *Trades*, do no tthink all this enough, unlesse some augmentation be laid to the peoples grievances, by annexing of a power or Jurisdiction of *equity*, to every, or many of these little Courts, which may bring up a *Brigade* of Inconveniences as a reserve to the former.

CHAP. IX.

That the annexing of a Jurisdiction or power of equity, to every or many of those new little Courts, will much increase the Peoples grievances, and turn that little Law which shall be left into a course of arbitrarines

FOr the annexing of the equitable part of the jurisdiction of *Chancery* to the Courts or courses of *Common* Law, when they shall be again established, as some would have it in their proposals or regulation of the Law, will, by giving every judge at Law a power of equity, make a cause that would be begun and brought to hearing, and an end, in two *Terms*, continue Six or *Seaven*, and by a long and tedious course of examining and crosse examining of Witnesses, be ten times more chargeable to the people, and when there is not now one in every *hundred* causes at Law, that go after to Chancery, and might be fewer if there were more *Conscience* in men, and the Rules of the Court better observed, make every single cause a double one, and a Suit in *Chancery* as well as at Common-Law when it needs not, put the Judges at Law (who before were so tyed up to their Oaths, and a prescript Rule of Law, as to weep over their own Sons and neareſt relations, rather than to deviate, or Swerve from the Text

or Rule of Law, into too great a liberty of exposition or arbitrarineſſe: Or if the equity of every cauſe ſhould be put to the Jurors, give us *Twelve* men of equity or *Chancellors* in every cauſe, will hardly be brought to underſtand it, but be ſo puzled in the finding out of it, as it will hardly, or, if at all, very tediouſly be drawn from them, if the matter of equity ſhall be left to the Judges alone, there will be little need of the Jury, if the Jury alone, as little of the Judge, ſuch an intermingling or uniting of the power of equity with the power of Law, can produce no better effect then to make every one to begin or make his Suit or action, would otherwiſe have been ended in a ſhort courſe of Law, in a long examination of circumſtances of equity or way of *Chancery*, and render the equitable or arbitrary part of thoſe Courts ſo *Superior*, and predominant to the legal, as in a ſhort time it will *alter* or take away the force and power of it: For the Judge will have a double power and Capacity to take which *Hand* he will, and to judge according to this or that Circumſtance, which he ſhall like beſt; the Law will be then faſt and looſe at pleaſure, and will not be as it is now *Lex a Ligando*, nor *Lex a Legendo*, but ſo incertain and inconſtant, as to alter or diſſolve it ſelf into an equity of this or that circumſtance, which can lay the faſteſt hold upon it, or the Iudge, and be ſo much at the expoſition or command of the Iudges, who were wont to be commanded by the Laws, as every thing they would have muſt be turned into an *equity*.

Which the wiſdom of our Parliaments and Laws were ſo far from ſuffering, as they would not ſuffer the *Chancery* to meddle with matters of Law, and the peo-

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ple in former ages ſo *jealous* of it, as they petitioned in former Parliaments, that judgements ſhould not be given in cauſes of Law, but by proceſs at Law, and that they might not appear in *Chancery* upon *Sub pœnas*, or writs of *quibuſdam certis de cauſis*, when there was remedy at Law, and was the cauſe that the *Chancery* hath heretofore and to this time kept themſelves to their conſtant courſe of allowing *Demurrers*, and diſcharging ſuch cauſes as might be relieved at Law. For if it were formerly a grievance for the *Chancery* to determine matters at Law, The putting or mingling of matters of equity into Courts of *Law*, will be but one and the ſame thing, and as like to be a *grievance* as the other.

Of which the late Parliament, in their argument againſt the *Councel* of the *Marches* of the North in 1641, were ſo ſenſible, as they alleaged it would be prejudicial to the people if the *King* ſhould be permitted to *canton* out a part of his Kingdom to be tryed by (z) Commiſſion (though it were according to the Rules of Law) or to erect new Courts of *Chancery*, and that the latitude and power of the Iudges of that Court of the *Marches*, in judging according to equity and diſcretion, was the *Quick-ſand* that ſwallowed up the peoples property and liberty, and that the very *adminiſtration* of Iuſtice founded upon ſuch illegal principles, was a grievance, and oppreſſion to the people; and the Houſe of Commons in the late Parliament (of which ſome of the now Members were then a part) were ſo far from altering their opinion in that particular, as in their grand remonſtrance of the State of the Kingdom, the (a) 15 of *December*, 1641 repeating what good they had done for the people, and what Courts they had taken away, they reckon that, and ſome other arbitrary Courts

(z) Mr. *Hides* argument in *April*, 1641 before the Lords in Parliament by order of the Houſe of Commons.

(a) Remonſtrance 15 *December* 1641.

Courts, and called them the forges of misery, and oppression.

And yet this is not all the proposers would have, nor will their appetite of change be satisfied, or the confusion be compleated, unless the Lawiers may be totally extirped,& the Innes of Court and Chancery, which used to breed them, be abolished, a doctrine any but the *quondam Jack Cade* and his men of rudeness, who would have all Learning and Letters suppressed, and the Score and the Tally to be the only Books of the Nation, would not only blush at, and be ashamed to own, but stand amazed, and dissolve themselves into a wonder, that any men should think (as some of these proposers have done) that the *Lawiers* or professors of *reason* should not be fit to intermeddle in the administration of *Justice*, as if reason, which God gave for a blessing and distinction to mankind, could be *Antichristian* or the mark of the *Beast*, or that all the praises of wisdom in the Scripture, were only to let men know, that those that had it were not fit to be imployed.

CHAP.

CHAP. X.

That in the right administration of Justice there is a necessity of Lawiers, and men of skill and experience.

FOr the Laws and Customs of all people, *Christians* and not Christians, Barbarians and not *Barbarians*, do allow and practise that most necessary and usefull *Maxime, Cuilibet in arte sua credendum, It is best to believe every one in his own art, or that wherein he is skilful.* All our Laws and reasonable Customs do forbid the using of Trades, to which men have not been Apprentises for seven years together. And several Acts of *Parliament* would not so much as trust Watermen to row upon the river of *Thames* nor the inhabitants of several Shires to use the art of *Cloathing*, nor so much as to make *Caps* or *Pol Davis*, unless they had been Apprentises to it. 2 & 3 P. & M. 8 Eliz. cap. 11. 1 Iac. cap. 24.

The Parliament in the third year of the reign of King *Henry* the eighth, and some other Acts of Parliament made since, provides that none but allowed and skillfull Physicians, and Chirurgions, should practise Physick, and Chirurgery, for that the practice thereof, by Artificers, and unlearned persons, was to the great displeasure of God, and grievance, hurt, damage, and destruction of the People. 3 H. 8. cap. 11. 1 Ma. cap. 9.

How then can these proposers, or *Trades*-men, imagine it to be good for a Common wealth, to banish all the knowledge of the *Laws*, and the *means* of doing Justice out of it, and to take in all manner of ignorance in the place of them? or that the Lawiers or men of Iustice should be a *burthen* to the Nation; when *Paul* took it to be no dishonour to have sate at the feet of *Gamaliel*,

was

Epist ad Tit. 3. v. 13. was more than ordinary carefull of *Zenas* the Lawier, and had never gone to *Rome*, nor converted some in *Nero's* own household, if he had not been learned in the Laws, and Privileges of the *Romans*, as well as of the *Jews*.

When the *Dutch* in their united Common-wealth or *Provinces* dare not trust their smallest causes to their (*b*) *Commissarissen op de kleyne Saecken*, without a Lawier added to them, and for causes of greater consequence will not in all their Colleges or Courts of Iustice want an *Assessor* or *Syndic*, being a Professor of the *Civil Law*, to direct and guide them.

(*b*) *Commentar. de Stat. confederat. Provinciar. Belgic.*

When the *Turks* who for the most part of them are by the Tyranny and designs of their Emperors kept in an ignorance of all Learning and Letters, can have their *Cadies* in their lesser Courts, and their Iudges in the *Divano*, or greater, purposely educated, and brought up in that which might enable them unto it, and do not put their *mad* men in places of Iudicature, though they give much respect unto them, and take them to be inspired.

And when these Propo:ers can at the same time for any thing which they have to do in their own affairs, labour to find out the most able and *skilfull* men, and would think them not to be their Friends at all, or to be some of the Inhabitants of *Gonzagua's* newly discovered Country slipped down hither through the Moon which should instead of a Physician bring them when, they are *sick* a *Carpenter*, or a *Plaisterer* when they are wounded for a *Surgeon*.

For can any man think that the Law which was heretofore esteemed to be as hard and difficult a *Science*, as it is noble and worthy, can be practised or given out to the

the people, without any manner of knowledge or learning of it, would these *Proposers* desire an Act of Parliament, that no sick and wounded men should any more use the help of *Physicians* or *Chirurgians*, but should go to the *Justice* of Peace for it? or that no *Carpenter*, *Mason*, or *Bricklayer*, should any more meddle in the building of Houses?

May not the Civil part of the government or power come in a short time to be as much endangered or disordered, by such an ignorant management of Justice as these propolers would have it, as the *Militia* or Military part thereof would be, if all the old *Legions* or Regiments and tryed Souldiers of the *Army*, should by a Law be disbanded and forbidden the art of war, and young boyes newly come from School, be taken on, and listed in their places, and none to be Captains or Officers but such as should want their sight or be blind? Or how little difference will there be betwixtan ignorant administration of *Laws*, and the having of no *Laws* at all.

Was it *Jethro's* good Counsel to *Moses* to choose able as well as honest Judges? and will any *Trades* men, or *Country* men now serve the turn? or to what a small avail had it been for the Children of *Israel* for *Moses* to have been learned in the learning of the *Egyptions*, and to have been enabled by God himself in his taking the Laws from his own mouth, if ignorant and foolish Judges had been appointed under him? or to what end was *Solomons* prayer to God for *Wisdom*, to go in and out before the people, if those to whom he should commit the care of Justice should not know how to execute it? or what would *Paul* the Apostle now

say if he were to plead for his life before such *Iudges* as these *Proposers* would bestow upon us, or how should he then say as he did to *Agrippa*, I think my self happy, King *Agrippa*, *Because I shall answer for my self this day before thee, especially because I know thee expert in all the Customes and questions which concern the Jews.*

Acts 26. 2 & 3.

These men therfore of Novelty or change may do well to consider that all things enjoy a happiness in their rest, and that a setled *consistence* must needs be more happy for *States* (so called of their *Stabilities*) than to adventure the hazard of so many changes, as the humours or designs of the people shall tender unto them, and to believe *Plato*, who was of opinion that *Legum mutationes* were *perniciosæ*, that *it was most dangerous to change Laws*, and remember what in the Last Parliament was delivered by an eminent Member of their own for a most certain truth, That the *Law* (*c*) *was the Temple or Sanctuary, whither the People were to run for shelter and refuge*, and that part of Mr. *Pyms* Speech against the Earl of *Strafford* published by order of the House of Commons in the late *Parliament*, and spoken by their own sense and direction, That *the Law is that which puts a difference betwixt good and evil, betwixt just and unjust; If the Law be taken away, all things* (*d*) *will fall to confusion, every man will become a Law unto himself, which in the depraved condition of Humane nature must needs produce many great enormities, Lust will become a Law, and Envy will become a Law, Covetousnesse and Ambition will become Laws, and what dictates and dicisions such Laws will produce, may easily be discerned.*

Plato de legibus

(*c*) *Mr. St. Iohn in his argument concerning ship mony in Ianuary 1640.*

(*d*) *Mr. Pyms argument against the Earl of Strafford.*

That the Common Souldiers of the *Army* did so well understand it in the year 1647, as they made it their request in their second Apologie to their General ~~the~~ Lord

(*e*) *Remonstrance and Proposals of the Army p. 11.*

Lord *Fairfax*, that (e) *Justice and Judgement might be dealt to the meaneſt Subject of the Land, according to the old Law.*

That the ſaid Sir *Thomas Fairfax* and the whole *Army*, did (f) afterwards remonſtrate to the Parliament, that *nothing was more dear and pretious to them in their thoughts, (they having hitherto thought all their preſent injoyments, whether of life, or livelyhood, or neareſt relations, a price but ſufficient for ſo rich a bleſsing) that they, and all the Freeborn people of the Nation, might ſit down in quiet under their Vines, and under the glorious adminiſtration of Iuſtice and Righteouſneſſe, and in full poſſeſſion of thoſe fundamental rights and liberties, without which they could have little hopes (as to humane conſiderations) to enjoy either any comforts of life, or ſo much as life it ſelf.*

(f) *Declaration of his Excellency Sir Thomas Fairfax and the Army 14 Iune 1647*

And were at that time ſo far from deſiring the *Lawes* to be taken away, as they deſired of the *Parliament* that *the right of freedom of the People to repreſent to the Parliament by way of humble Petition their grievances, (for ſuch things as could not otherwiſe be remedied than by Parliament) might be cleared and vindicated, and that in ſuch things for which men have remedy by law, they might be freely left to the benefit of it,*

And that in the *Parliament, Anno* 1648 (Many of whoſe *Members* were then the Officers of the *Army*, that had ſubſcribed that Remonſtrante) were ſo well contented with it, as in a Declaration of the *Parliament* of *England* (g) expreſſing the grounds of their proceedings, and of ſetling the preſent Government in the way of a *Free State*, they declared unto the People in theſe words, *viz.* that.

(h) *Declaration of the Parliament of England 17 March 1648. p. 24. & 25.*

They are (h) very ſenſible of the excellency and equality of the Laws of England, *being duly executed; of their great antiquity even from before the time of the* Norman *ſlavery forced upon us; of the Liberty, and Property, and Peace of the*

the Subject, so fully preserved by them; and (which falls out happily, and as an increase of Gods mercy towards us) of the clear consistency of them with the present government of a Republique, upon some easie alterations of form only, leaving intire the substance; the name of King being used in them for form only, but no power of personal administration of judgement allowed to him in the smallest matter contended for.

They know their own authority to be by the Law, to which the People have assented; and besides their particular interests, (which are not inconsiderable) they more intend the Common interest of those whom they serve, and clearly understand the same, not possible to be preserved without the Laws and government of the Nation; and that if those should be taken away, all industry must cease, all misery, blood, and confusion would follow, and greater calamities if possible, than fell upon us by the late Kings misgovernment, would certainly involve all persons, under which they must inevitably perish: and that these arguments are sufficient to perswade all men to be well contented to submit their lives and fortunes to those just & long approved Rules of Law, with which they were already so fully acquainted, and not to believe, that the Parliament intends the abrogation of them.

But we have read of a people that died with *quailes* in their mouths, and of a generation of that people did expostulate with a *Roman* Magistrate for going about to hinder them in their *Self*-destruction, we shall therefore leave these *Proposers* to the busie imployment of their own imaginations, and make our addresses to the Supreme authority, who being called together for the works of *righteousnesse* and *Iustice*, and bringing good intentions along with them, have a power to give a stop to that *Fury*, is now amongst a small part of the *People*, but enough to undo all the rest: Humbly

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beſeeching them to *reſcue* out of their hands, the Laws and *Birthright* of the people, and to reach out their hands to preſerve that Law of *Property*, which God himſelf by Thundrings and Lightenings pronounced from Mount *Synai*, and wrote(*i*) a ſecond time with his own *Finger*.

(*i*) 8th. *Commandement in the Decalogue*

That the Judges and profeſſors of the Law, and alſo all Perſons intereſſed or concerned in any loſſe may happen by any alteration thereof, may be heard or adviſed withall in what particulars may be charged againſt the *Laws* in being, or thought fit for reformation, and to take into their conſideration. That in the reformation in the Body *natural*, the *Cure* is never gone about by a total *diſſolution*, nor any part of it intendedly cut off even in caſe of *Gangrene*, where there is any hope to keep life, or to cure without it.

That the *Petitions* which have been againſt the *Laws* are not the voice or general outcry of the *People* in their ſeveral *Counties*, or made by the conſent or approbation of the *major* or any conſiderable part of them, but are an *Engine* or *Artifice* of ſome people never made uſe of till theſe times of *Troubles*, to advance their deſigns and *conveniences*, and bring ruine to others, by petitioning in the names of a whole County or *Province*, of which many times not one in every thouſand of the Inhabitants ever knew or heard any thing before of it. Too many of the *Petitions* concerning publique affairs, having been of late and for ſome years paſt made and *framed* by a *few* in the name of *many*, and many times not in the place or County from whence they ſeem to come, 20000 hands ſaid to be ſubſcribed, when there was not ſo many ſcores, & of thoſe, many ignorant peoples names or marks put to it, that were meerly led or

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ſeduced unto it, eighty Schools Boys have at once ſubſcribed their names to a Petition by the procurement of their *School Maſter*, ſome have had their names ſubſcribed when they were never privy unto it, and others that could not write or read, have been drawn to ſuffer their names to go along with a Petition, was for other matters than they were informed of.

And that if all the People of this *Nation* were but freely called together by *Tribes* and *Wards*, or Centuries to give their votes concerning our Laws, as the People of *Rome*(*k*)were,to peruſe and approve the Laws of the *Ten Tables* brought from *Athens*, and to ſpeak and give their voices as freely as they did then, there would be one thouſand for or to every one that ſhould appear againſt it, would not only conſent to the continuance of the *Laws* and Court of *Iuſtice* we have iu being, but be moſt earneſt *Petitioners* for them.

Andwould be pleaſed if upon a free & full hearing,as hath been lately granted in the matters of *Tithes*, any thing ſhall be found fit to be abrogated or taken away, they to conſider,

That in the Acts of Parliament of 27 *Henry* 8. *cap.*28. & 31 *Henry* 8.*cap.*13.Touching the diſſolution of *Abbies*, there is a ſaving of all Corodies profits & penſions, due to any other than the Donors,& their Heirs,& *Abbots* & *Abbeſſes*, &c. In the Act for eſtabliſhing *Laws*& Ordinances in *Wales*. 34 & 35 *Hen.* 8. *cap.* 26. There is a ſaving for the Kings Officers for their *Offices* and Fees. In the power given by Parliament to Queen *Mary* in the firſt year of her reign, to diſſolve, alter, unite, or put into one,the Courts of *firſt fruits*,Wards,& *Surveys*, Augmentation, and *Dutchy of Lancaſter*; there is an expreſſe *ſaving* of all annuities, penſions,fees, ſtipends, or

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ſums of money, which they might or ought lawfully to have, by any letters patents or grant of the ſaid Court of *Augmentation*.

And that if the Queen ſhould annex any of the ſaid Courts to the *Exchequer*, it ſhould be with a ſaving to all perſons of all Offices, of keepers of Chaſes, Parks, Houſes, and the profits thereof, and all Rents, Annuities, Fees, &c. with a *proviſoe*, that that Act ſhould not extinguiſh or take away from any perſon any Fees, or Sums of Money which they Lawfully had before the ſeventh of *Iuly* then laſt paſt: That in the diſſolution of the *Abbies* by *Hen.* 8. proviſion was made, and penſions given for life to ſuch as had places or imployments in them, as to Readers, *Curats*, &c. and the like: and Corodies or *proviſion* of diet made into a yearly penſion granted out of *Abbies* and Priories ſaved to thoſe that had right to them, many of which are to this day enjoyed by the purchaſers of them.

That in the Act of *Parliament* 3 *Jacobi*, *cap.* 16. For the bringing of the *new river* water to *London*, recompence and amends was to be made and given before hand to ſuch as ſhould be endamaged by it.

That in the Act of *Parliament* 7 *Iacobi*, *cap* 19 for the continuance & repair of a *weare* upon the River of *Exe*, near the City of *Exceſter*, recompence is provided for any that ſhall be loſers thereby, for that (as the words of the Act are) it ſtandeth with the rule of *Equity* and *Iuſtice*, that thoſe which ſhould receive ſo great benefit by it, ſhould yeeld competent and ſufficient *recompence* to ſuch as ſhould ſuſtain any loſſe or detriment thereby.

That in the putting down of *Epiſcopacy* in *Scotland* in the late King reign, the Parliament of *Scotland* did think fit

fit to allow to the *Bishops* yearly pensions or maintenance during their lives, and suffered them to enjoy it.

That in the last Parliament of *England* satisfaction was promised to the Officers and Clerks of the Court of Wards upon the dissolution thereof, and so much intended as the Lord *Say*, and Sr *Benjamin Rudiard* had some thousands of pounds paid or promised unto them, and a Committee was appointed to consider of the value of every *Clerks* place, and their losses sustained by it. The Wives and Children of Ministers that were put out of their Benefices, and of *Delinquents*, were allowed a *fifth* part of their Husbands estate. And that in the *Proposals* or Petitions for taking away of *Tithes*, there is a desire or intention to give to them a maintenance equivalent by some other way. That in the Act of the Parliament 29 *May*, 1649. for the draining of the *Lincoln* Shire and *Cambridge* Shire Fenns, the *Commissioners* have power to make satisfaction to such persons, whose Interest or Lands, shall be made worse in quality or condition, by the draining of them, proportionable to their losse and damage. That *Iosias* king of *Iuda* in his *reformation*, and turning to the *Lord* with all his *Soul* and with all his *might*, did in breaking down the high places permit the Priests (though Causers of grosse Idolatry) (and more peccant than any which do now belong to the *Law*) to eat of the unleavened bread among their Brethren. That by the rule of our Saviour Christ in the *Gospel* we are to *do* as we would be *done* unto. And that the promise in the first Act of this Parliament to be as carefull of the Peoples property and liberty as of their own lives and estates, will not be performed without having rightly informed themselves before hand of what they

2 *Reg.* 23. 9.

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would put down or alter, hearing those that are *concerned*, and giving them a just recompence, for what shall be thought fitting to be taken away.

Which if for a general good may (for such part of the Law as shall be found fit to be abrogated or taken away) be done.

With content to all *People*, and according to natural and common equity.

By a Publique and general *Assessment*, or some other way of certain satisfaction for it.

That so there may be a mutual *preservation* of the people, no sighing of *multitudes* of poor, or broken in *Spirit*, nor *complaining* in our Streets.

FINIS.

By the Authors abſence from the Preſſe the Errata's following have eſcaped the Printer, which the Reader is intreated to amend, or ſupply.

IN Page 9. line 12. adde [*which*] in l. 33. dele [*for*] in p. 16. l. 7. r. [*Fuſtitical*] in l. 33. r. [*and*] p. 17. l. 6. r. [*abſtract*] in p. 19. l. 9. r. [*or*] for [*as*] in l. 10. r. [*the miſtake of the Judges*] in p. 20. l. 1. r [*and*] in p. 20. l. 25. dele [*but*] in l. 32. r. [*now be had for it*] in p. 25. l. 8. r. [*may then*] in p. 26. in l. 5. of the title of Ch. V. r. [*of this*] in p. 26. l. 7. r. [*Syllan*] in l. 15. r. [*Reformation of*] in p. 28. l. 14. r. [*have been*] in p. 29. l. 1. r. [*and from*] in l. 10. r. [*they did not*] p. 31. l. 25. r. [*or fit*] in p. 32. l. 19. r. [*it is*] p. 33. l. 1. r. [*new modeld*] in p. 34. l. 5. dele [*to*] in l. 6. r. [*Aſſiſtant*] in the latter end of l. 32. dele [*the*] in p. 35. l. 4. r. [*rightly*] in l. 10. dele [*and*] and r. [*can no more be kept from*] in l. 11. dele [*can no more be kept from*] and in l. 12. adde [*and*] in l. 12. dele [*ſave*] in l. 17. r. [*ſhould*] in p. 36. dele [*and*] in p. 38. l. 23. adde [*that*] in p. 39. l. 26. r. [*Canon*] in p. 40. l. 23. r. [*will little help the buſines*] l. 25. r. [*and to oppoſe*] l. 29. r. [*be*] in p. 41. l. 3. r. [*or if*] in l. 14. r. [*had adviſed*] in l. 25. r. [*that ſhould*] in p. 47. l. 5. r. [*the*] in p. 49. l. 11. r. [*ſecurity*] in l. 33. r. [*and*] p. 50. l. 23. r. [*were*] in p. 51. l. 3. in the Margent, r. [*9 H. 3. cap. 11.*] in p. 54. l. 6. r. [*27 H. 8. cap. 5.*] in p. 55. l. 21. r. [*Serjeant*] p. 57. l. 14. r. [*attachments upon*] l. 18. r. [*withernam*] in p. 62. l. 9. r. [*to*] in p. 74. l. 6. r. [*Benjamin*] in l. 24. r. [*in*] in p. 69. l. 23. dele [*in*] adde [*in Anno*] in p. 46. l. 3. r. [*one hundred and Thirty thouſand*] in p. 24. l. 16. r. [*allowed*] in l. 17 dele [*to Bricklayers and Carpenters.*]

95-6.79